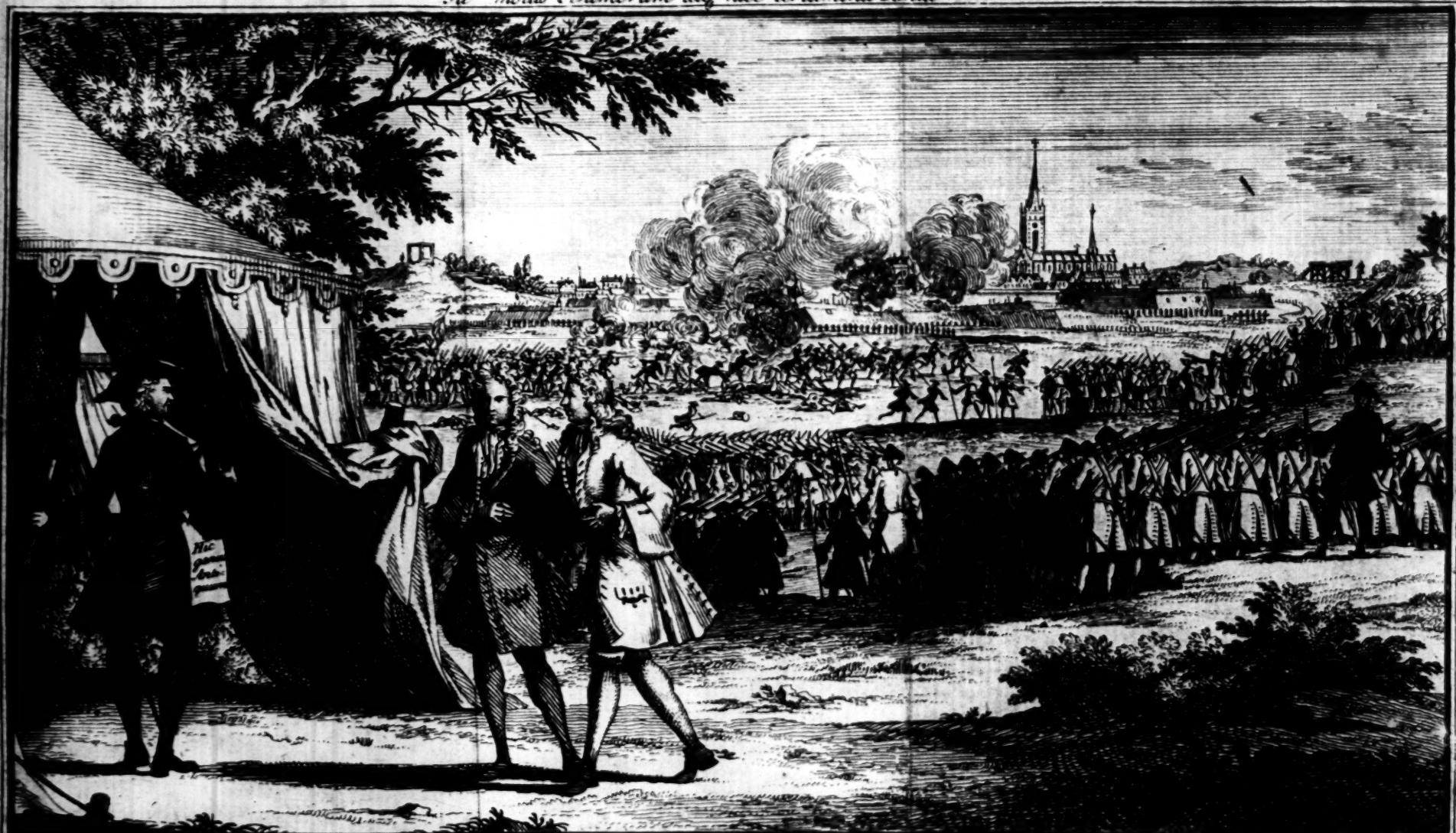


Hi motus, inumorum atq; haec certamina Santa



pulveris exigu jactu Compressa quiescunt.

J. Cole sculp.

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THE *Early* 1720
HISTORY
OF THE
CLEMENCY
OF OUR
English Monarchs.

The Usage Prisoners, who Surrender'd at Discretion, have met with from their Hands.

Compar'd with several Matters of Fact which have lately occur'd in this Kingdom.

With an Account of the Manner of issuing forth Acts of Grace and Pardon in former Reigns.

Written for the Information of the present Age, and of Posterity.

The Second Edition, with Additions.

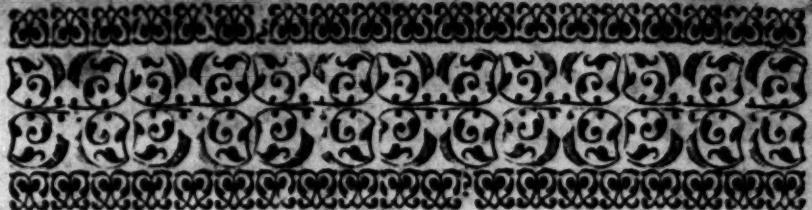
ECCLESIASTICUS x 3.

An unwise King destroyeth his People.

By M. F.

L O N D O N; Printed for the Author. 1720.





THE PREFACE.

TH E World may wonder to see a Treatise of this Nature appear so immediately after a General Pardon, and may imagine it wou'd have done better before: But perhaps the Government - would have thought that I had made too free with their Power, if I had presum'd to give them Directions in what Manner they should issue forth Acts of Grace and Pardon.

On the other Side, it comes out in such a Time, as no Man can think I design'd it as a Reflection upon the Act lately promulg'd: Because it was in the Press before I had the least Knowledge or Sight of the said Act, and all but the Preface, was compleatly finish'd before, so that I

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could not without a Prophetick Spirit (to which I do not in the least pretend) calculate this Book to make Reflections thereon.

If some will say, that I seem to regret the Fate of those Preston Gentlemen who were hang'd; I must needs confess, I rather wish'd they had died with more Honour. A lingering Sickness, or the impetuous Sallies of a Feaver, would have redounded more to their Credit than to come to such an End.

It can be no Crime to pity the Sufferings of my Countrymen. The Bowels of Compassion, the Precepts of Christianity, and the mutual Relation Subjects have to each other, plead vigorously in their Behalf; and I should think my self not fit to live, if I could let my Blood freeze when I think thereupon.

Some perhaps will say, I reflect upon the Government, which acquiesc'd in their Fate.

To which I answer, that the Thoughts of my Heart are appropriated purely to my self. But as Application makes the Reflection, I shall fling the Load upon those who make too free with what I have said.

Slander

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Slander is what as a Christian I abominate, as I do also all false Constructions upon Words; and thus I leave such Men to themselves, to think of my Performance what they Please.

For my Part I have impartially consider'd Matters of Fact, which have occur'd in this Kingdom; and if I have been guilty of false Representations, I will take all the Charge upon me of reflecting on the Government, and undergo the Pains consequent of so much Temerity.

If others are offended that I put my Name to this Book, let 'em know that I hate to wound in the Dark. I am not afraid to shew my Person or my Deeds to the Light; as I have entred upon Previous Resolutions to offend neither my God or my King.

Let the Guilty conceal their Names, and secretly Blast the Reputation of the Good. For my Part I shall urge nothing, But what I shall justifie to God, who knowes the Secrets of our Hearts, and to the World, which oftener condemns thro' Prejudice than Sincerity

What I have written, is in Defence of Mercy and Charity; 'tis in Defence of the

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common Rights of Mankind, and surely this can be no crime with any Court, which pretends to Distribute Justice to the People. But if it is a Crime; may blacker never spot my Soul, or disturb the Calm and Tranquility of my Mind.

What has that Man to answer for who sheds innocent Blood? What a Question is it, whether his Pains in Hell will be sharper than his Earthly Torments.

But to give false Evidence against a Fellow Subject, and a Christian; to stain a Guilty Land with additional Murthers, is surely a Crime not easily expiated; no Trivial Repentance will blot out the Remembrance thereof.

I do not directly charge this upon General Wills, but if his Evidence is contradictory, 'tis not all his Preston Regiments shall make me Surrender my Honour and Conscience, and conceal the Truth.

This Hercick General, at my Lord Wintoun's Tryal gave in these following Depositions, upon which I shall make proper Reflections.

1. He tells the Court of Two Attacks made, but does not mention one Word of

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of the Event, excepting stealing into an
House.

2. The next Day about Two a Clock, General Forster sent one Oxburgh to offer to lay down their Arms and submit themselves, and hop'd he would recommend them to the Kings Mercy which he refus'd, and told them he would not treat with Rebels.

If the General was resolv'd to treat with them in no manner whatsoever, he ought either to have hang'd the Messenger, or at least detain'd him from returning to the Town.

3. Upon this the Colonel was sent back, and Captain Dalzeel was sent out to desire Terms for the Scots; Wills Answer was, that he would not treat with Rebels, nor give them any other Terms, than what he had offer'd them.

Surely here is a Confession, that he did offer some Terms, and can this be construed no Treating with the Gentlemen.

4. He granted 'em 'till Seven a Clock next Day to consider; and sent Colonel Cotton in, to bring the Hostages, and yet all this was no Treating.

5. He

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5. He agreed with them, that no Intrenchments should be cast up in the Streets; no People suffer'd to run out of the Town, and yet he made no Terms at all with these unhappy Men.

I woul'd have the Reader observe, that all the Terms General Wills in his Depositions allows to have been propos'd to those Gentlemen were, that they should Surrender themselves to the Government's Pleasure; as tho' perishing in hot Blood was not much more agreeable than being cut off in cold. This is what General Wills in his Tryal expressly defines Surrendering at Discretion.

Moreover, if we examine Will's and Munden's Evidence, we shall find how much they ~~they~~ differ from each other.

Wills says, that they offer'd first to lay down their Arms, and submit themselves to the King's Mercy, and beg'd his Recommendation thereto; And that he refus'd to grant 'em any Terms.

Munden says, they first insisted upon Terms; and that Surrendering to have their Lives spar'd, 'till his Majesty's Pleasure was known, did not please them, and they

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went away discontented. This is a flat Opposition to the other's Evidence.

Moreover, Wills blusters in his Evidence, and vapours upon no Occasion, for if they came to him with no other Desig'n than to Surrender to the Mercy of the Government; such Terms he never scrupled to grant, as appears by his own Confession. What then was the mighty Difficulty, which enrag'd the General to such a Degree, as to threaten the Destruction of every Man; a Sentence so like that of Captain Bluff in the Play; tho' 'tis my Opinion, if the Work had been so easy, he should had done it at the first Attack.

Let the Reader judge, after impartially considering these Premises, whether Evidence, in which the Lives and Fortunes of so many were concern'd, ought to be crowded with such Contradictions.

What General Wills calls granting no Terms, when he Granted them all they at first come for, I cannot find.

The only Difference I can possibly find out was, that he would not oblige himself to intercede in their behalf, and this he calls granting no Terms.

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I must needs say, he kept his Word as to his Intercession in their behalf; he took particular care to recommend 'em only to be hang'd.

General Wills confesses, that they at last Surrendred at Discretion thus.

That it was in his Power to cut them all to Peices, but he gave them their Lives till farther Order.

But this Definition as he is pleas'd to call it, is opposite to the universal Opinion of Mankind, both of the present and past Ages, nor is there any General in Europe will agree to this Definition.

Moreover, if we grant his Definition and Application to be true: The Government by the same Rule have cut into Pieces all the Prisoners in Newgate and in the Marshalsea, Three or Four Months after their Imprisonment, without any formal Tryal; which is false in Fact. For the Martial Law ceases from extending to Subjects, after the Sword is wrested from their Hands, unless they be otherwise Subject to their superior Officers; and therefore the Government could not have sent farther Orders to cut them in Pieces in cold Blood, for if they had offended; the Laws

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Laws of the Country ; take them into their Cognisance, and by them and not by Martial Law shall they be punish'd.

This was the Result of a General's Speech made to an House of Lords, as tho' not one Member of that Illustrious Assembly was vers'd in the Law of Arms, so much as to know what Surrender at Discretion to meant.

Who can help smiling at the General's Narrative of the Attack ; not one Word of running away, nor of falling like mowed Grass. But the taking an House was what he most insisted upon ; an House which the Enemy had left, rather for fear of it's falling upon their Head, than for any other Reason. And yet does he put this house upon an equal Degree of Honour with taking the Town.

He concludes with an Account of not above 70 Men killed, and all this upon his Oath.

O Brave Man ! thy Name shall be Registered in the Annals of Fame, and this Preface shall be thy Monument, when thou art gone to sup with Derwentwater's Shade.

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I shall beg the Reader's Pardon, for detaining him so long from the Subject propos'd. I have no more to say, than only to wish him more Patience in the reading, than I had in the writing upon this melancholy Subject, and so I shall leave him to his Good Genius, and remain his hearty Well-wisher.

M. EARBERY.

P. S. I have one Question to Demand of General *Wills*, viz. What Sentiments he had of Surrendring at Discretion in *Bribuega*; or whether the World would have had Reason to be sorry, if King *Phillip* had clos'd in with this brave General's Definition of surrendring at Discretion; in Relation to this Hero, who seems to understand the Law of Nations, as much as he understood Commanding in that Town.



INTRO.



THE INTRODUCTION.

CONTAINING,

In Account of the Rising of some Gentlemen in Scotland for the Chevalier St. George: their coming into England, and joyning with General Foster and others in Arms, the Action that happen'd at Preston in Lancashire; the Surrender there at Discretion, and the bringing divers of them up from thence Prisoners to London, written by one Officer present during all that Time.

Upon the Eight of October 1715. The Viscount of Kenmure with six Gentlemen (being one of the Number my self) went from Liberton Dam within a Mile of Edinborough about 11 of the Clock at Night; march'd for Terquaire, where we arriv'd about 8 in the

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the Morning with the STANDARD in Company. There having convers'd sometime with the Earl of T——r, march'd after 8 Miles farther to *Trskilaw*, in a very rainy and intolerable windy Night, to the hazard of our Lives, by reason of prodigious Precipices, and very high Mountains ; but we arriv'd at length at a *Lairds* House, where we sat round the Fire all Night with much Satisfaction, Drinking the King's Health and Prosperity to the Cause then begun, in Milk and Water ; and for Supper we bak'd Oat-Cakes and fed like Farmers ; about break of Day, *viz.* the 9th we made our Rout for *Ker---nel*, about 30 Miles of Bogs and Mountains, where arriving about 6 in the Evening, the Vice-count order'd us to the Inn, and went himself to — s where refreshing himself for about 2 Hours, he call'd at the Inn about 8, Drank the *Chevaliers* Health, embrac'd us, and said there was a Necessity for his riding all Night to convene some of our Friends, so went off, tho' very dark, with only a Guide, desiring us to stay there, till farther Orders.

Next

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Next Day invited us to Dinner, when the E. of *W---town*, with Ja. *Mac---on*, and a few more Servants arriv'd & stay'd there that Night; next Morning the 11th we receiv'd Orders to follow the Viscount, so the Earl with us and a few more that had joyn'd, march'd on to a Place call'd *Gate-side*, upon the River *Annan*, where we found the indefatigable Viscount, the E. of *Carn-th*, Captains, Ja. &c. J. *Dalzel*, and about 30 Gentlemen on Horseback; about 20 stand of Militia Arms were distributed here which the Viscount had seiz'd at Sr. John *Fonstones* House; During the aforesaid Time the Viscount was never in Bed. In the Evening, are march'd to Mr. *Moffet* where we before, we alighted were joyn'd by 80 or 90 Gentlemen well mounted from *Edinborough*, having a Trumpet with em. (a) These in their March from *Edinborough* had the Marquiss of

(a) The Number of those who joyn'd *Kenmure* at *Moffet* from *Lothan* and *Stirling-shire*, were but about 60 or 70. and the Reason of their not taking *Annandale*, was his being too far before 'em, e're they had notice of his passing that Road, for they wander'd not one Foot broad out of the way after they were in Chase of him.

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Annandale in Chase for several Hours; but by their Mistaking the Road he escap'd them; at Night about 20 Horse belonging to the E. *Wint-n* joyn'd us, we set a Regular Guard, and appointed Sentry's at all the Avenues leading to the Town.

On the 12th we march'd a handsome Body towards *Dumfreze*, near which Place we drew up to the Number of about Sixscore, resolving to enter the Place Sword in Hand, but upon information sent us by our Friends (from that Pestiferous Nest of Whigs) that the Marquiss of *Annaudale* had got in there upon the Head of some Thousands of Arm'd Militia, and that the Streets and Avenues were barracadced with Trees, Beds, and Stones &c. It was thought advisable not to attack it, so we wheel'd towards *Lochmaben*. In our way thither we seiz'd the Post-Master and one of the Magistrates of *Dumfreze*, who were sent as Spies, we kept them under strict Guard that Night, but being inform'd that Mr. *Caruders* a Surgeon, and Mr. *Craig* a Vintner in *Dumfreze* with a Servant of the Viscount of *Ken-r*

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Ken-r were Prisoners at *Dumfreze*; we releas'd 'em on parole to set them at Liberty, which accordingly they perform'd that Evening. We likewise seiz'd *Scot of Ranalbarne* one of the Deputy Lieutenants, left his Horle and dismis'd Hinself upon Promise that he would lay down his Commission, and serve no longer under this Government.

The Standard was display'd at *Loch-maben* the 13, and the *Chevalier* Proclaim'd upon the Crofs by the E. of *Carn-th*; then we march'd but without much Order till we arriy'd at *Kell-Head-Muire* about 12 a Clock; where we were form'd into 6 Troops, under Captains, Lieutenants and Cornels, so then we march'd in Order (as we did always after that; each Captain according to his Seniority) to *Aik/eseikin*. In which Place there was a Fair, which occasion'd our marching into the Town without displaying the Standard. We were joyn'd by several, *Annandale* and *Nidisdale* Gentlemen, and upon the 14th we march'd to *Lankholm* where we were joyn'd by the E. of *Nitis---l* and others with his Lordship, who brought an Ac-

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count of Brigadier Mackintosh's Landing from Fife at Dumbar with 1500 Highlanders.

We march'd the 15th to Harwick, designing to rest there the next Day ; but unexpectedly about Noon, Trumpet sounds to Horse, and we march'd back to Lanholm. That Day I commanded the Vanguard, being the Night before Corporal of the Guard. In an Hours march we met Robt. Douglaſ a Scots Gentleman, ſent Express by Mr. Forſter ; with him I return'd with two Gentlemen of the Vanguard, to introduce him to the Viscount, upon which we return'd to Harwick ; at the End of which Town a Halt was made, and the laid Mr. Douglaſ dispatch'd back again to Mr. Forſter, with the Viscount's Answer ; ſo march'd on to Fedborough, tho' the Day was pretty far spent. In a Maire near that Place a Gentleman advancing a little too far, was unexpectedly among the advanc'd Guards, and it being then very dark return'd in a great Hurry, to our mighty furprize, and ſwore that Argyle's Grey-Horse were advancing our Front, and that he was very ſure he was among them

This

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This put us in some Disorder, but finding out the Mistake, we soon recover'd our selves, and so got safe into Town, where we were chearfully receiv'd.

Here, after being joyn'd by several Gentlemen, Proclamation was made, and then upon the 16th march'd to *Rothbury* in *Eng and*, 24 miles, over very high Mountains, and streight Valleys, rested there next Day, and were joyn'd by the Lord *Der—r*, Lord *W—n*, Mr. *Forster*, and about 200 English Gentlemen, besides the East Lothian Gentlemen, and those of the Merse, that had joyn'd the English at *Hexam*, and other Parts of *Northumberland*.

We march'd in seperate Bodies to *Wooler*, where having stay'd the 20th and 21st till a Gentleman who was in *Quest* of Brigadier *Mackintosh* return'd, and brought Account that he was at *Duns* with 1200 Highlanders.

Upon the 22d we march'd still in several Bodies to *Kelso*, where the said Brigadier joyn'd us with his Foot. Next Day the Scots Horse were drawn out into a Field at the Town's end; when Quarter Mast-
ers,

The INTRODUCTIO.

ers, Adjutants, and other necessary Officers were appointed. Next Day the Highlanders were drawn up in the Church-Yard, and there we receiv'd them: then march'd into the Market Place, surrounded the Cross, where the E. of *Dumferling* proclaim'd the *Chevalier*, and the E. of *Mar's* Declaration was read by Mr. D. P.

Here expresses were sent to, and came from the E. of *Mar* with an Account of *Carpenters* approaching, which occasion'd several Councils of War to be held. I was told that Brigader *Makintosh* was for giving Battle to *Carpenter*; (b) and that his Opinion was approv'd and resolv'd in the Council; But how it came not to be executed I cannot tell.

But instead of prosecuting that Night's Resolution, (which might have been done with advantage and consequently Success) being at that Time 600 Highlanders stronger than at *Preston*, and *Car-*

(b) I cannot find by all the Enquiries I have made that ever Brigader *Mackintosh* was for Fighting *Carpenter*, but on the contrary.

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penter not 700 in all. But to save our Army from this terrible Carpenter (of whose Numbers it appear'd we had uncertain Intelligence) we were march'd to *Feeborough*, the Scots Horse one Way and the English two different ways, and the Foot a fourth. Scarce had we stabled our Horses there, but we were allam'd with the Enemy's falling on our Foot, which then were not within 2 Miles of us, and cutting them to Peices.

On this report all of us immediately Mounted and coming near our Foot found all well with them; then we drew up in Battle Order, perceiving a Body of Horse marching along a Hill, the same way we had come a little before, on which he drew up on a rising Ground, where we stood some Minutes in Suspence, till by a Signal given, by one sent out out from us, we understood them to be a part of our own English coming up. Having thus clear'd our selves from all fear of the Enemy, both Foot and Horse arriv'd at *Feeborough* upon the 27th.

Here prov'd new difficulties arise, which fatal in the Consequences to our unfortunate, Enterprize, which I shall give

an

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an Account of, as far as it occurr'd to my Knowledge. That Night it was resolv'd that our Route next Day should be to wards *England*, which the Earl of *W-ton* oppos'd, and brought over most part of the Highlanders to be of his Opinion. He not only succeeded in this Opinion with them, but likewise many of the Horse that had joyn'd with him. This mighty and dangerous Demur put off our marching on *Friday*, during which Time all imaginable means were us'd to bring the Earl to their Measures. Prevailing at length, His Lordship consented they might do what they pleas'd. But alas ! this did not satisfy the common Highlanders, for on *Saturday* Morning, instead of marching out regularly, all of them went out at the West Port, without their Chiefs or other Leaders. This you may imagine put all of us in a surprizing Consternation ; tho' Viscount *Ken-mure* march'd out after them, on the Head of the Horse, and having left us and the *English* to be drawn into *Batalia* at the Town's End, His Lordship with the Heads of the *Clans*, that were there, orde after the Foot, who perceiving them cunningly

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cunningly drew themselves up to the skirt of a high Hill, resolving to fire upon the Horse, if ~~they~~ they approach'd them; but his Lordship upon the Promise that he should only march them to *Dumsfreze* joyn'd us again.

However, Multitudes of them straggled off upon this unlucky occasion. This being the 29th we march'd to *Havvick*, and from thence upon the 30th march'd to *Langholm*, 20 Miles; where the Foot and *English* Horse were only to Quarter, and the *Scots* Horse to be canton'd in the Adjacents.

But our Quarter Master getting counter Orders, march'd us under Cloud of Night to the *Langtown*, but with Orders to stand at our Horses Heads. and bait in the Street. About 2 Hours after Trumpet sounds to Horse, making our Parade to the River side to the Number of about 200, march'd with the E. *Carnwath* upon our Head 14 Miles farther with Moon-light to *Ecclefeighen*, where arriving about 1 in the Morning, were order'd to bait our Horses in the Street; and stand by them our selves, till sound of Trumpet, which about 2 Hours after did

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did Charge us to Horse, and being drawn up as we imagin'd to surprize Dumfresē (c) that Morning : but just as we were beginning our March, an Express arriv'd from the Viscount, upon which we were order'd to dismount, and shift the best we could for our selves and Horses till break of Day. Then upon the approach of Day we mounted our Horses again, and march'd back about 6 Miles, to the Top of a Hill, where we were to Halt untill we hear'd again from our General the Viscount ; after resting there near two Hours, his Lordship's Orders were that we should wheel into the *Langtown* in *England* about 14 Miles distant at that Time, with only the Rest abovemention'd. In this Town call'd *Langtown*, upon the Review next Morning, we had only 600 of our 1300 Highlanders there, and they as much discontented for being balk'd of going to *Dumfresē* as they were discourag'd at their marching to *England*.

(c) The Number that march'd with *Carnwath* towards *Dumfresē* were about 300.

Upon

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Upon the 31st march'd into *Branton* in *Glisland*, from which place Mr. *Forster* appear'd as our Commander in Chief ; and I must not forget to tell you that General *Forster* told us that he had Receiv'd Letters from his Friends in *Newcastle*, hearing that the *Lancashire* Gentlemen were impatiently waiting our coming into *England* ; and that there were already about 1200 of them in Arms, and ready to joyn us.

This with an Express from the Earl of *Mar*, with his approbation of proceeding (as we were told) into *England* (d) satisfy'd all that oppos'd it (except some *Tiviotdale* Gentlemen) to the Number of about 50 of them who deserted.

Upon the 1st of *November*, we march'd from *Penrith* (e) upon the *Fells*, on

(d) It is certain the E. of *Mar* did approve of coming into *England*, and his sending the Highlanders over the *Forth*, was on that very design.

(e) It was upon the Day we march'd to *Penrith*, that we dispers'd the 10000 *Militia* under *Lonsdale* and the *Bishop* : for at *Penrith* our Lords and Generals sat down to a sumptuous Supper which was ready prepar'd for *Lansdale* and *Carlile*, which they had left in such hast that some had forgot their Gloves, some their Whips, and some their Hats in the Room where they design'd to have supp'd.

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which was the Lord *Lonsdale* with the Bishop, *Militia* and *Posse Comitatus* of *Cumberland* consisting of about 10000. Who all upon our appeaing dispers'd themselves. We took about 100 of them Prisoners, but upon Promise they should never appear again in that Cause ; we dismiss'd them.

Upon the 2d we march'd to *Appleby*, where we rested two Nights, and upon the 4th to *Kendale*, upon the 5th to *Kirby Lonsdale* and upon the 6th to *Lancaster*, where by certain Intelligence we understood that a few of *Pitt's Troops* were at *Preston*, who upon our approach made an early March about 4 of the Clock in the Morning, back for *Wigan*. Animated by this hasty retreat of theirs, after we stay'd there 2 Nights, we march'd upon the 8th to *Preston*, but the Foot stay'd that Night at *Garstang*, and about Noon next Day arriv'd at *Preston*. We loyter'd here from *Wednesday* till *Saturday* the 11th without any Notice of the Enemies being the Night before at *Wigan*, within 12 Miles of us. But on the Contrary General *Farster* was heard to say the Day before, that he had certain

In-

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Intelligence there was not an Enemy within 40 Miles of us.

On Saturday Morning we were all Mounted to march to *Manchester*, when in half an Hour after, we were order'd to dismount again and stable our Horses upon Intelligence that Generall *Wills* with one Regiment of Horse and 6 of Dragoons and *Preston's* Regiment of Foot was the Night before at *Wiggan*, and upon his March within a few Miles to attack us. Upon this unexpected alarm about 120 under Command of Collonel *Stuart* of *Kenochen*, and about 50 Horse with whom Mr. *Forster* went himself, were detached to view the Ground about, and to take Possession of the Bridge call'd *Ribble* Bridge. The General took the Horse some way farther to view the Ground; after which he left the Horse, who were to wait there till he should return: but he neither

Collonell *Farquharson* of *Invercauld* commanded the 120 Men at *Ribble* Bridge, and not Collonel *Stuart*, and had one Major *Forbes* of *Skeletor* in command with him, the said Collonel withdrew from the Bridge after Barracading it; by order from the Generall Officers in *Preston*; which order was carried by Mr. *Duncan Mackintosh*.

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return'd nor sent Orders nor Succours, till the main Body of the Enemy was within Sight, and approach'd within Gun shot of us.

I shall not expostulate upon the advantage we might have had by maintaining of this Pass, it obvious to all that know it: In short, there was no use made of any advantage, that the Nature of the Place sufficiently afforded.

* Collonel *Stuart* was also recall'd with his Detachment, much against his Will, declaring that he (almost) with the Men he had could defend it against all the Forces *Wills* had at that time.

These Posts being thus abandon'd; about one of the Clock having Information of the Enemy being ready to enter in upon us, with Sword in Hand, we were posted in the Streets as follow-*eth* *viz.*

Collonel *Stuart* with his Detachment and Mr. *Wogan* with his Detachment of

* It was not Collonell *Stuart* but Collonell *Ferguson* as above-*said*.

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English in the Street which leads to Wigan.

Lord Charles Murray in the Street opposite to the Church Northward.

The Laird of Mackintosh in the Street that leads to Lancaster.

Captain Douglass with Strathmoore's Men in the Fish-Street Westward. And sundry Lanes were defended by Parties.

The Earl of Carnwath was with a strong Detachment of Horse in the Market in readiness to sustain others: all the rest of the Gentlemen serv'd on Foot, many of whom were with the Viscount Kenmure, and the E. of Derwentwater, in the Church-Yard to sustain both Lord Charles Murray, and Collonel Stuart.

Being thus posted the Enemy appear'd marching into the Town as if there were none to oppose them, but in that they soon found they were mistaken. A Party of the Highlanders fir'd so briskly upon them that several of them dropt down and gave way immediately: and had not we then been infatuate, (as in all our Proceedings we were,) that small advantage might have been pursued even to the defeating of all that had at that

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time got over the Bridge. We might at least have possess'd our selves of several convenient Places within the Town, and where the Enemy had advantageously posted themselves, as particularly in Sr. *Henry Houghton's* House, eminent like a Steeple over the whole Town.

From this House and another over against it, we were pester'd with their Shot which was very smart; insomuch that we could not appear in the Streets, but lurking to sustain those that were briskly attack'd by the Enemy.

The first attack was upon Colonel *Stuart* and Captain *Wogan*, than whom braver Men never appear'd in a Field of Battle.

The next attack was upon Lord *Charles Murray* (f) who maintain'd his Post with equal Bravery.

Then a General Attack was made at all Parts, and at every one of them, the

(f) At Lord *Charles Murray's* Attack the Enemy renew'd their Charge as often and smartly as at any other of the attacks, but were still repuls'd with considerable Loss as they were at all the Attacks.

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Enemy was gallantly repuls'd with considerable Loss. They fir'd Houses at all the Attacks, that when Night came on, we were surrounded with Flames.

As all the English behav'd extreamly well, so none more signally than the Lord *Darwentwater* (g) in keping mostly at the *Church Yard*, (where he abundantly expos'd himself, and threw about his Gold liberally to encourage the meaneer sort;) and particularly for throwing a Trench before our Cannon. His Lordship with a great deal of bravery and resolution was for dislodging the Enenay from Sir *Henry Houghton's* House, offering to lead on the Party himself, but neither could this be allow'd. Would to God I could say as much in Praise of our Generals as of the Gallantry of the Valiant Earl of *Darw—r*, who if he had been seconded.

(g) After the gallant *Darwentwater* had provided Straw, Faggot and other combustible Matter and a Log of Wood fir'd at one End, and was just ready to go from the *Church Yard* with a Party, to set Fire to two Houses where the Enemy had lodg'd themselves, and from whence they gall'd us with shot, he was countermanded by an Order from General *Forster*.

with

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with equal Merit, the Enterprize could scarce have fail'd to have been bless'd with a more successful Event.

The Enemy continuing firing all Night upon us, as we did upon them; we took several Prisoners both Officers and Soldiers, and got several of their Arms. In this manner we defended our selves without loosing one Inch of Ground from one of the Clock that Afternoon, till about 3 or 4, in the Afternoon the next Day; and all that were kill'd on our side were about 8 or 9, and about as many wounded, the Enemy had slain and Wounded about 300, besides several Officers.

About which time we perceiv'd to the Surprize of all, one of the Enemies Drums beating the Chamade in the Street, and immediately we were all order'd to our Horse, and call'd from our Posts to the Market Place, and the Foot had the same Order. This made most of us judge, that the Party had been first propos'd by the Enemy, when to our mighty consternation, we understood that Mr. Ferster had first sent out Messages to *Wills*, and had only obtain'd (upon surrendering us at Discretion) a Cessation of Arms till 7 next

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next Morning. Upon this the Officers and Parties guarding the Avenues and Barracadoes, were call'd from their Post, and all order'd to their Quarters.

This as yet was more surprizing than what had happen'd before: The effect of which Souldiery-Orders, was to make an Inlet for the Enemy to come into the Town, and cut our Throats, or plunder us in Bed: as indeed they did not fail to straggle in upon us in multitudes, and plunder us, and the Inhabitants, before the appointed Time of Surrender.

What the Nature of this scandalous Treaty was, I could never learn: But the result prov'd that before 8 the next Morning, *Wills* upon the Head of his Army with *Carpenter* who had join'd the Evening before; consisting in all of 13 Regiments of Horse, Foot and Dragoons; march'd into the *Market Place*, where we were deliver'd up like Sheep to the Slaughter.

At which time what was omitted by the Stragglers in the Night, was then compleated; few escap'd being plunder'd of their Money and Cloths, &c. Nor could we meet with worse Treatment (our Lives

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Lives being sav'd) tho' we had been taken Sword in Hand.

So many of us as could be cram'm'd into the Church (without Distinction) were put under strict and strong Guards there: And the Nobility and the rest, depos'd off in different Houses in the Town.

The Souldiers were allow'd to plunder the Inhabitants, which continued from their Entry till Eleven a Clock the next Day, that by Trick of Drum, they were discharg'd, upon pain of Death, not to plunder any longer.

The Number of us that were Prisoners were about 12 or 1300 few or none escaping.

I am sorry in this conflict I could not discover any remarkable Valour in our Commanding Leaders.

I had observ'd Brigadier Mackintosh appear in several Places during the Action & that he had receiv'd a slight Wound in the Arm. It must be allow'd that he is of sufficient personal Courage: But I shall not answer for his Conduct, more than for that of our other Generals; tho' in Charity I conceive my self (contrary to the Opinion of many) that there has been

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been no Treachery in the Matter, yet I
can confidently avert that either con-
duct, if not both, has been the Cause of
our Misfortunes there, and of what has
follow'd in the Event. And great pity that
it should thus happen, for without Va-
nity or Flattery I may say, that there
could not be braver nor more resolute
Men, than the *Scots* and *English*, and the
few *Irish* that were assembled there.
Nor could any be heartier to venture both
Lives and Fortunes in the Cause in which
they had out of Duty engag'd.

Having thus finish'd the Detail of this
Misfortunate Enterprize, I have only to
add that we were kept Prisoners in
Preston from the Day we were deliver'd
up, till *Sunday* after, that *Wills* had re-
ceiv'd Orders from above how to dispose
of us.

Mr. *Forster*, the Nobility, and above
200 of the Gentry and Servants were sent
with a Guard of about 250 Dragoons
under the Command of Colonel *Pearson*,
(who used us civilly) to *Wigan*; where
we stay'd to the 24th then Mr. *Forster*,
the Nobility, Gentry and their Servants
to the Number of 200 were sent towards
Lenden

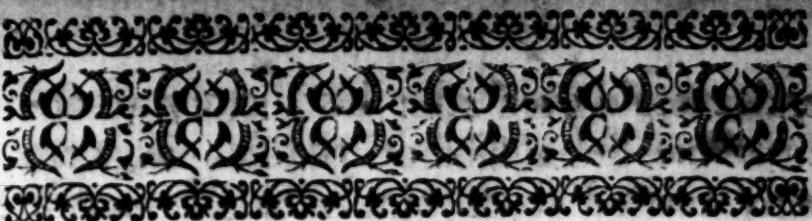
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London, under a Guard of 100 Dragoons commanded by one Major *Bland*, who deliver'd us at *Coventry* to one Brigadier *Panton* a mighty huffy Man, with a party to Guards us of 200 of *Lumley's* Horse. *Panton* as a mark of Distinction caus'd Mr. *Forster* and his Chaplain *Patten* to be led in Halters (b) from *Coventry* to *Barnet*, where all from the Lord to the Servant were pinion'd with small Cords. In that Manner we march'd on to *High-Gate*, where being divided into 4 Detachments were led one after another, by a Souldier of the Foot Guards to each of us.

Thus triumphantly we were brought into *London* the Nobility were committed to the *Tower*; the rest of us to *Newgate*, the *Fleet*, and to the *Marshalsea* Prisons. Where we are all (except those brought to the Scaffold) Safe.

A D I U E.

(b) I told this to an *English* Officer who had the Charge of Mr. *Forster* and *Patten*, and he said they were not led in Halters, but a small Cord was ty'd to the Eye of the Bit; and their Horses were led in that manner.



 O begin with *William the Conqueror*, when his Son the second time had rebelled against him, notwithstanding repeated Provocations, upon his Submission, the Father took him into *England*, employ'd him in the rough Wars of *Scotland* where only Blows were to be got ; and put not one of his Followers to Death, nor even to the Hardships of Confinement.

After he arriv'd to the conquest of this Kingdom, he maintain'd such a precarious Post with so much Ease, and with so little Loss of Blood, (not that he wanted Severity in his Temper) as shew'd that he had Prudence to govern his Passions, and make the People love and fear him at the same time.

He landed in *England* upon the Pretence of a Title to the Crown ; yet did not this Pretence make him severe upon those who oppos'd him : *Edwin* and *Morcar* Earls of *Northumberland* and *Mercland*, his most bitter Enemies, who

endeavour'd even after his Victory to obstruct the Submission of the People, were only carried with him into *Normandy*, to prevent their making a Revolt. He kept them in some measure confin'd, and releas'd them before he died ; nay *Daniel* observes, there was but one Nobleman executed in all his Reign, and he was a Man who had twice falsified his Faith before.

Daniel gives this Character of *William* the Conqueror.

“ For his Devotion and Mercy, the
 “ Brightest Stars in the Sphere of Majesty,
 “ They appear'd above all his other Vir-
 “ tues ; and the due Observation of the
 “ first (the Clergy who lov'd him not)
 “ confess'd ; the other was seen in the
 “ often pardoning and receyving into Grace
 “ those who rebell'd against him, as if he
 “ held Submission satisfactory for the
 “ greatest Offence, and sought not to de-
 “feat Men, but their Enterprizes.

Yet no Man trampled more upon the Liberties of the People than himself, *factus jam de Rege Tyrannus* says an Historian ; But he always was for dry Oppression, and took no manner of Pleasure in

in quartering those, whom he look'd upon to become his Subjects.

Likwise his Son *William* shew'd as signal Acts of Clemency to the party under the Influence of the Bishop of *Baieaux*, who put the unsettled Prince in danger of the Loss even of his Crown; he first us'd his Endeavours to regain by mild and gentle measures the most active in the Rebellion. Accordingly *Montgomery* and his Accomplices were brought off without any spilling of Blood, or discovering the least Signs of Revenge or ill Nature left behind. *William* drove the rest of the Faction before him into *Kent*, forc'd *Odon* Bishop of *Baieaux* to surrender, and to promise that those who defended *Rochester* should do the same. But tho' as it is suppos'd, the Bishop acted a treacherous Part, and joyn'd the Rebels in the Town; yet when he was taken again, he was dismiss'd upon his abjuring the Kingdom of *England* and no publick Executions follow'd this mighty Disturbance.

He afterwards entred into Articles with Duke *Robert*, a Prince reduc'd to the last Extremity: But nevertheless it was stipulated, that those *Normans* should

be restor'd to their Estates in *England*, who had been engag'd in the late Rebellion.

Various Struggles were carried on in the succeeding Reign of *Henry* the First, between himself and his Brother *Robert*; both had their different Pretensions to the Crown, but *Henry* had the Advantage of Possession. *Robert* landed at *Portsmouth* in an hostile manner; but a Peace was concluded, with a Pardon for all those who had engag'd in Arms for *Robert*; such Concessions did *Henry* make in Regard of the Dubiousness of his Title.

The Quarrel again in the Year 1106 broke forth, and ended in the intire Ruin of the unfortunate elder Brother; he was taken and imprison'd, but not one of his Adherents were put to Death; nay, he was us'd in that Confinement with as much Civility as a Prison could afford, till by endeavoring to make his Escape, Indignation prevail'd over the pitiful Sentiments his Brother shew'd before, and he was deprived of the use of his Eyes.

We shall find also in the Year 1102, a certain Lord held the Castle of *Arundel* against the King. But when it was taken, he

he was neither hang'd, drawn nor quarter'd; but only sent to breath cooler Air in a foreign Land.

If we view the Wars between the Empress *Maud* and *Stephen*; the Fortune thercof underwent Variety of Change. *Stephen* was taken Prisoner by the Empress and *Robert Earl of Gloucester* by *Stephen's* Party, yet no publick Tryals, no Executions follow'd: The Dispute was at length amicable comprimis'd, and *Stephen* made *Henry*, the Empres's Son his Heir.

(a) *Henry II.* Endur'd perhaps as high Provocations from his own Flesh and Blood as History can parallel: Yet when he had conquer'd the disobedient Wretch in the Field, he entred into these following terms with the Rebels. He made offer to his Son of half the Revenues of the Crown of *England* with four Castles therein; or if he had rather remain in *Normandy*, half the Revenues, thereof and all the Revenues of the Earldom of *Anjou*; and to his Son *Richard* he offer'd half the Revenues of *Aquitain*,

(a) *Dan.* p. 102.

and four Castles in the same; to *Gef-
fery* the Land that should come unto
him by the Daughter of the Earl of *Conon*.
Besides he submitted himself to the Arbit-
ration of the Archbishop of *Tarento* and
the Popes Legates, to add any Allow-
ance more as in their Judgments should
be held fit, reserving unto himself his
Justice and Royal Power: But the Spirit
of Ingratitude and Disobedience animated
the wicked Son to refuse all Overtures of
Peace.

Rebellions crowded upon the unfortu-
nate old Prince, but he overcame the
greatest Difficulties, beat the Earl of *Lei-
cester*, took the King of *Scots* Prisoner, and
put his Enemies to such a Plunge as to
send for the Son to check the growing Suc-
cesses of the Father, who had attack'd the
Castle of *Huntington*, made the Defen-
dants surrender to his Mercy, but sav'd
their Lives and Members from the Pu-
nishment due to their Crimes. He like-
wise took the Castles of *Framlingham* and
Bungay, which says *Daniel*, "the Earl of
" *Bigot* held by force of *Flemings*, for
" whom the Earls Submission could hardly

" obtain

“ obt. in Pardon, 'tho in the End they
“ were sent home.

We must observe, they were Foreigners. But the Earl who was a natural born Subject of *England*, had his Pardon without Dispute. Our Princes never lov'd to sheath the Sword of Justice in the Bowels of their own Subjects.

Upon this the Son bends to an Accommodation ; the Father glad to see the repenting Prodigal return to his Duty ; receives him with open Arms, and an unbloody Peace was concluded.

(b) I shall next proceed to a Reign infamous for Cruelties, in which it will appear that tho' *John* was exquisite in a barbarous Roughness of Temper ; yet some Villanies were reserv'd for latter times, which he could never find out : They are the Fruits of more modern Ages, when Wickedness has been refin'd upon, and improv'd.

About the fifth Year of his Reign, he took his Nephew *Arthur, Hugh le Brun,*

(3) Dan. p. 130.

with the Barons of *Poitou*, and about two hundred Knights, and Men of Command, all whom he carried away bound in Carts, and dispers'd into divers Castles, both of *Normandy* and *England*.

He took particular Care to Murther his Nephew, and several of his Prisoners and Hostages ; not by any formal Trial, but by secret Treachery and Baseness.

The Consequence of which was, that he exasperated the Nobility in his Dominions in *France*, and was intirely strip'd of all his Provinces therein ; so certain it is, that Mercy is the surest Guard to a Prince in his Throne.

The suppos'd barbarous Cruelties to *William de Brause* and his Family, by a Record in (c) *Rymers Fœdera*, will appear rather a Fiction of Historians than a real Truth. But however, a short Account of this matter leads me naturally to treat of Attainders and Outlawries. The Reader will find the Proceedings in such

(c) *Rymers Fœdera* Vol. 1. An. 1212. A. 14. Jch. p. 162.

Cases very long and circumstantial ; and that such Methods werenot recurr'd to without repeated Crimes and Provocations.

The King himself thus lets forth in his Appeal to the World.

‘ That *William de Brause* ow’d him the Sum of Five Thousand Marks besides other Debts, which he took no manner of care to pay ; upon which his Chattles were order’d to be seiz’d, which he had in *England*. But he remov’d all his effects into *Wales*, upon which Orders were sent, that they should be there distrein’d.

‘ But his Wife and Relations making humble Application, that the said *William* should have leave to repair to the King to satisfy the Demands : He came accordingly to the King at *Hereford*, and deliver’d three Castles into his Hands by way of Surety, that the Money should be paid within a certain time ; and promis’d moreover, that all Lands in *England* and *Wales* should be tied as Security for the before mention’d Sums ; he also deliver’d his two Sons as Hostages, with the Children of some of his Tenants

‘ nants, as Pledges of his Faith and Ho-
‘ nour.

‘ Nevertheless, he took no care to sa-
‘ tisfie those just Demands ; but on the
‘ contrary, endeavour’d by force of Arms
‘ to recover the Castles from the Power
‘ of the King ; and upon his failure in
‘ that Attempt turn’d to a Village call’d
‘ *Liminster*, which he plunder’d and
‘ burnt, not without shedding the Blood
‘ of several of the King’s Servants therein.

Upon sending a Force sufficient to cor-
rect such insolence : The Rebel retir’d to
Ireland, where he was entertain’d and
cherish’d in Opposition to repeated Com-
mands, that he should not be protected
in that Place.

They indeed promis’d, that if *William*
in a certain space of Time did not pay
the full Demands, they would no longer
receive him within their Bounds. But
even in this they forgot their solemn Pro-
mises.

The King mov’d with just Indigna-
tion, was preparing an Armament to
procure that which Justice and Lenity
could not obtain. But *William de Brause*
applied to his Justices in *Ireland* for a Pafs,

to repair to the King in *England* to procure a Pardon, and make amends for his past Insolence, which they granted upon the solemnest Assurances, that he would turn neither to the right Hand nor to the left, but proceed in a direct Journey to the King's Person. However he forgot all these serious Obligations, and was no sooner enter'd the Borders of *Hereford*, than he enter'd into Cabals to destroy and injure the King.

But when he saw a Force approaching to reduce him, his Nephew applied to the King for Leave to treat with his Uncle and found his Intentions ; which was readily granted, as afterwards, that *William* should approach nearer, and enter upon a formal Treaty. He offer'd Four Thousand Marks as immediate Satisfaction for his Lands in *England* and *Wales* ; to which Answer was return'd, that such an Agreement was not in his own, but in his Wife's Power to confirm : But that he might have a safe Conduct to go with the King to *Ireland*, to procure the Ratification of those Conditions ; and if that could not be perform'd, another Passport should return him safe into *Wales* again.

He

He refus'd these Terms and when the King's Back was turn'd in his way to *Ireland*, *William de Brause* burnt his Mills and wasted his Lands.

At *Carickfergus* Advice came to the King, that *Maud* the Wife of *William de Brause*, with her Daughter the Wife of *Roger de Mortimer*, *William de Brause*, Junior, with his Wife and two Sons were taken Prisoners by *Duncan de Caryck*.

This produc'd Overtures on the Lady's Part, to pay Four Thousand Marks provided her Husbands whole Estate should be preserv'd from any further Claim. However in three Days she repented of these Terms, and refus'd to subscribe thereto.

Upon King *John's* Return to *England*, he brought her Prisoner with him; she consented at last to pay Four Thousand Marks, and to enter into Bond to pay Ten Thousand more, if the said Agreement should be receded from.

In the mean time *William de Brause* continued Hostilities upon the Borders: and when the Bayliff of *Hereford* demanded him as a Malefactor, in order to proceed against him as an Outlaw; Orders were

were sent in consideration of this agreement with *Maud*, to defer proceeding to those Extremities.

Upon his Return to *England*, at the earnest Petition of the Lady, her Husband was permitted to visit her, and afterwards to see the King, and confirm the Agreement his Wife had made.

But he soon forgot his Promise and privately withdrew out of the Kingdom and his Lady absolutely refus'd to pay the Sum demanded, upon which according to the Custom's of the Kingdom he was outlaw'd.

To witness the Truth of which, no less than Fifteen Lords set their Hands.

I conclude, that King *John* in these Dayes would have passed for a merciful Prince.

I would have the Reader observe, how much he has been wrong'd by Historians in Relation to his Cruelty to this Family; which might have pass'd for a true Piece of History, if this Record had not been preserv'd to confute the Falseness of the Reports. (d)

(d) *Rymers Federæ Vol. 2. p. 171. A. 1213. 15 John p. 1821.*

(e) We have not only King *John's* Testimony as to these matters of Fact, but we have the Evidence of Fifteen Lords, amongst whom was the Lord *William Ferrars*, a Nephew of the said *William de Brause*, and one who interceded with the King in his behalf.

(f) We find also Security given by King *John* to indemnify even the Archbishop of *Canterbury* and other Bishops, who had been engag'd in a most flagrant Rebellion; and in Conjunction with the Pope had promis'd Remissions of Sins to all who would endeavour to depose their Sovereign.

He also revers'd the Outlawries he had passed upon the Clergy, and declar'd that such censures did not belong to Ecclesiastical Persons.

I would not have the Reader understand me as pleading for the Mercy or Goodness of King *John*: I am apt to believe with other Historians, that he was

(e) Mat. Westminster, A. 1213.

(f) Rymer's *Fœdera*. p. 172. Vol. 1.

the Mock of human Nature, a Brute in the Disguise of a Man.

But even he coul'd sometimes moderate his Passions, and be guilty of real, not pretended Acts of Clemency.

It will not be improper perhaps, to give the Reader the Contents of a Letter, wrote by Pope *Innocent* to the Clergy to instruct them to mediate between the King and his Barons, which may serve for Instruction to the Princes of this Present Age, and shew them better, than by consulting Machiavellian Politicks, to preserve a Crown ; whether they ascend a Throne by Violence, or by natural right. For both must have the same Methods of preserving what they have got, by whatever different ways they procure the same. A Lawful King must govern his Subjects by Clemency, and must rule them with the Affection of a Father for his Children ; and an Usurper must imitate the Justice and Lenity of the Natural Prince ; or his Possession will be as precarious as his Life ; He must endeavour to banish from the Minds of the People, even a Notion that he governs only for himself, and to gratify his Ambition or his Revenge : He

must take care not to discover the Nature of the Wolf lurking beneath the covering of the Lamb.

To return from this Digression, let us take a view of Pope Innocent's Letter.
(g)

He tells the Clergy, he wonders they could unconcern'd view the Confusions of their Native Country, as tho' they had no Share or Part therein; and not endeavour to apply Lenitives to ease the Smart, and qualifye the Rancour of the Wound: Nay he observes, they rather increas'd the Flame and blew the Coals, which were like to lay a scurisking Kingdom in Ashes; such unhappy Measures did they take unknown to their Fathers before 'em.

He therefore presses upon them the Act of Oblivion, and burying in Obscurity those Feuds and Animosities, which took their Rise from the unhappy Quarrels between the Church and the State: That they should exhort the Nobility to be Loyal, and return to a sense of their Duty to their Sovereign,

(g) Rymer's *Federa* Vol. 2 A. 16, John 1215. p. 296.

by which Means they would more surely recommend themselves to his Favour, and more easily obtain those Privileges which should not be call'd for in a military manner.

He at the same time enjoyns the King to treat them with Mercy, and not to refuse their just Petitions.

He wrote a Letter to the same Purpose to the Barons, in which he advis'd them to return to their Duty ; and He at the same time engages that the King should be enjoyn'd to pardon what was past and could not be recall'd.

Such Notions of Oblivion and Mercy prevail'd, which now are despis'd as Solecisms in Politicks, and look'd upon as the Blunders of weak-headed States-men.

But God forbid, some Notions, in these Times maintain'd, should in succeeding Ages prevail : I have heard it asserted, that no Faith should be kept with Rebels ; a Notion as bad as that no Faith should be kept with Hereticks ; a Notion which would reduce our unhappy Country in Case of a Civil War, to a worse Condition than those of *Transsylvania* and *Wallachia*, when the Turks and Christians are engag'd

in War. Surely it sounds contrary to the common Instinct of Humanity, to give Quarter to a Foreign Enemy, and none to a Countryman, Friend or Brother.

But I am very confident putting Men to Death, who surrend're with their Swords in their Hands, is not favour'd by many Presidents in our English History.

(b) *Matt. Westminster* relates of King *John's* signal and unparallel'd Cruelty, that when he took *Rochester Castle*, he sent the miserable Nobility Prisoners to *Corf*, where they scarcely escap'd with their Lives.

This Historian had not dipp'd his Pen in Presidents of Executions, after taking Prisoners of War: nor was the Imprisonment, even of those who had been engag'd in Rebellions as frequent as other Accidents in History. He thought, good Man, that King *John* ought immediately to have discharg'd them from their Confinement.

He afterwards recover'd all the Castles he had lost in *England*, particularly one

is mention'd by M. *Westminster*, which surrend'red upon Condition of having their Lives, their Liberties, and their Fortunes secur'd.

His Son *Henry III.* succeeded to his Kingdom, in a manner lost by the Treachery of the Barons, who call'd over the French to their Assistance, as People resolv'd rather to ruin their Country, than forego the sweet Hope of Revenge. (i) But their Stubbourness prov'd fatal to them ; the King got an entire Victory, and took Prisoners Saer Earl of *Winchester*, *Henry de Bohun* Earl of *Hereford*, *Gilbert de Grant* lately made Earl of *Lincoln*, by *Lewis*, *Robert Fitzwalter*, *Richard Monfichet*, *William Mowbray*, *William Beauchamp*, *William Mauditt*, *Oliver Harcourt*, *Roger de Cressy*, *William de Colevil*, *William de Ros*, *Robert de Roply*, *Ralph Chanduit* Barons ; besides 400 Knights, or Men at Arms with their Servants Horse and Foot : (k) yet when we consider what use was made of this Victory, we shall find that

(i) *Dan. A. 1. Hen. 3. p. 149.*

(k) *Dan. 1. Hen. 3.*

it only procur'd a Peace with a general Pardon and Discharge for Prisoners on all Sides, without so much as bringing one Prisoner to a Trial, or seizing any Part of their Estates.

The Terms of that Treaty, as I find in (1) *Kymers Fædera* were these.

1st, ~~That~~ all those who were engag'd the from beginning of the War with *Lewis*, should have their Lands restor'd as at the first, and all the Privileges and Liberties of Subjects.

2dly, That the City of *London*, and all other Cities and Corporations should unmolested, enjoy their Franchises and Customs.

3dly, That all the Prisoners should be released on both Sides.

4thly, That *Lewis* should release the Barons, and all other Persons from any other Oaths of Fidelity, Allegiance or Security they had sworn to him;

Thus ended a Civil War, which had laid waste the Kingdom of *England*, without pouring forth one drop of cool

Blood upon the unhappy Land, involv'd
enough in Guilt before.

About the 9th of *Henry III.* an Accident happen'd remarkable in its Circumstances, and which will abundantly confirm my Hypotheses, and give very much Light into the matter about which I treat.

(m) *Foulk de brent* held out the Castle of *Bedford* against the King, *i. e.* his Brother *William de Brent* maintain'd that Post by his Orders. (n) The Castle was taken by Storm, for which the Garrison paid dear; and I believe were for the most Part cut ~~to~~ in pieces or hang'd, for which they might thank their own Temerity. Tho' a Reader of English History would imagine by the Infrequency of such Executions, that Death was not the Punishment due to Traytors in those times; and that *Henry III.* gave the first President.

(o) If we attend upon the Fate of *Folk*

(m) *Matthew Westminster. A. 1124.*

(n) *Dugdales Baronage Foulk de Brent.*

(o) *Uxor autem illius, quia nunquam vel Tyrannidi ejus nec etiam Copula Maritali consenfit, cum filio ejus Thomā indemnes permanerunt, immunes à pena sicut à culpa, M. Westminster.*

de Brent, we shall find that when he surrend're'd in cool Blood, tho' his Crimes were crying both against God and Man, in Consideration that he had serv'd the Crown faithfully before, his Life was spar'd, and he was only sent a Pilgrimage to bewail his Sins ; his Lady upon her Petition had his Dowry, and her Son's Blood was not affected by his Father's Rebellion.

(p) *Richard Mareschall Earl of Pembroke* oppos'd the King, and held his Castles against him, and all this was done about the Year 1233.

(q) *Henry III.* besieged one of his Castles, but was so far from the Thoughts of putting the Men to the Sword, or making them Prisoners for Life : That he only insisted upon delivering the Castle for Fifteen Days into his Hands, by which time he propos'd all the Abuses in his Government should be rectified.

Afterwards, as he lay in the Abby of

(p.) *Dugdale's Barouage Mareschall & Pembroke*,
(q) *Walsingham Hypodigm. Neustria, 1233.*

Morgan,

Morgan, a Fryar came to him with Conditions from the King that if he would submit to Mercy, he should have a large Proportion of Herefordshire to support him honourably, which he refus'd ; but afterwards he was taken Prisoner, and died of his Wounds.

His Brother *Gilbert* upon the Intercession of the Archbishop of *Canterbury*, had his Lands deliver'd to him, and the Restitution of Honours as ampliy as his Ancestors had before.

Thus we see how careful our English Monarchs were, not to involve the innocent in the Punishment of the guilty.

Indeed this Family gave Instances of a successive Generation of Rebels. Even this *Gilbert* joyn'd with the King's Enemies, and was justly punish'd by Providence with a miserable Death at a Tournament. The Conduct of which Family made the King (when he was pres'd by *Walter Gilbert*'s Brother to grant Livery of his Inheritance to break forth into Passion in this manner. (r) Thy Father *William* tra-

(r) *Dugdale's Baronage*.

terously

terously permitted *Lewis of France* to escape out of *England*; his Brother *Richard* was a publick Enemy, and *Gilbert* was kill'd at a Tournament against my express Prohibition ; and thou wast there also in Contempt of me, with what Face then, canst thou lay Claim to that Inheritance.

However, the King in his cool Blood gave him his Land, with a Pardon for the Insurrections in which he had been engag'd against him.

Surely the Reader in the end, wil be convinc'd, that Oblivion was the peculiar Characteristick of our Antient English Monarchs, tho' they had to deal with stubborn and undutiful Children.

But because, some hot furious Men in these times, are for condemning all those who have been unhappily engag'd in Rebellions, to the Sword, and will not grant Rebels the Liberty of Capitulations or the Law of Arms ; I would have them know, that the same Justice which allows Independant Powers the Law of Arms, allows the same for those engag'd in Rebellion ; for Foreign Princes have no more Right to Invade their Neighbours Territories,

tories, than Subjects have to Rise against their Prince. But the Necessity of Affairs gives an equal Right to both and a just Claim to that Law.

(s) *Theodosius* the Emperor, was judg'd by all the World to have been worthily Excommunicated by St. *Ambrose*, for putting to the Sword a whole Garrison at once; a Fact which carried Horrour even in the Relation.

In pursuance of my Argument, I shall give the Reader a perfect Relation of what happen'd in the 47th of *Henry III.* at the Assault of *Northampton*.

The King being advertis'd that several of the Barons were conven'd at *Northampton*, he commanded the Barons to surrender the City, or give Hostages for Security of their Allegiance; otherwise he would fall upon them without Mercy: To which *Simon de Montefort Junior*, who govern'd in his Father's Absence, return'd this Military Answer, that they would ~~not~~ hold out to the last Extremity. The

(s) Knyghton Lib. 2. p. 2447. Ap. Collect. Histor. Ang. Antiq.

King sent another Message, in which he invited them to a Parley; which being agreed upon, and fix'd to that Part of the Town which lay next to the Meadows; *Phillip Basset* on the other Side, took an opportunity to fling down a side of a Wall, which open'd a Passage for 40 Horse to enter in Front: In the Scuffle *Simon de Montfort* was taken Prisoner. The Clergy distinguish'd themselves in this Action with so much Rebellious Zeal, that the King swore he would hang them all; upon which every one made their Escape with what hast they could: Some run into the Castle, others into the Church, but very few of those of the common People got out of the Town; however, the Storm was soon over without much Expence of Blood.

The King seem'd at first resolv'd to be as good as his Word, in Relation to hanging the Rebels: but upon its being represented that the Chief of the English Nobility were there, some of whose Fathers or Relations were then engag'd in the King's Service; and that it would be dangerous to proceed to such Extremities; his Anger fell, and cooler Sentiments took

took Place both in regard to the Nobility and Clergy.

Those in the Castle considering their Inability for want of Provisions and other Necessaries to defend the Place, submitted to the King's Mercy. There were taken these following Nobility, *William de Ferrar, Peter de Montfort, Bauldwin de Wak, Adam de Newmarch, Roger Bertham, Simon Montfort Junior*, (who first set up his Standard against the King) *Hengeramus de Waterville, Pugo Gubyon, Thomas Mansell, Nicholas Leewake, Robertus de Newton, Philip de Bribi, and Grimbalde Pennevolt*. These were the Nobility taken, who where dispers'd into several Castles in the Country, and *Simon de Montfort* was sent to *Windscr.* (u)

A Peace was shortly after concluded after Variety of Fortune in Engagements, and not one Nobleman was punish'd in cold Blood, tho' some deserv'd it Heaven knows full well. But the Clemency of our abus'd English Monarchs has ever been as Notoriours, as the shining of the

Sun at Noon ; I wish it could at least have rais'd some Sentiments of Gratitude.

Thus far I have carried the Reader thro' the Mazes and Intricaces of an inconstant British Genius drench'd in Blood and Rebellion. I may venture to say, no People are more inconsistent with themselves, or more difficult to give an account of, than they ever have been.

About the Fifteenth of *Edward the Second*, under Pretence of removing the *Spencers*, the Barons took Arms. The Mediation of the Queen induced the King to comply, and grant a general Pardon, which may be seen in the Appendix.

But immediately after a more dreadful Catastrophe happen'd in the following Manner.

The Queen was dispos'd to lodge in the Castle of *Leeds*, which belong'd to the Lord *Badlesmore*, but she was refus'd Entrance, and forc'd to shift for her self as well as she cou'd.

The King enrag'd with this brutish Affront offer'd to his Queen, marches with an Army, takes the Castle, and hangs the Keeper ; sends the Wife and Children of

the Lord *Badlesmore* to the Tower, and seizes on all his Goods and Treasure.

Upon this a War broke out, which prov'd Fatal to the Rebels, and gave the first President of Publick Executions from the Time of *William Rufus*, to that Day in this Kingdom.

For the King taking sudden and unexpected Measures, surpriz'd the Barons before they cou'd make such Preparations as were necessary to oppose the Torrent. Some were pleas'd to go with the Stream as particularly the *Mortimers*; the Lord *Hugh Audley*, the Lord *Maurice Barkley*; who notwithstanding were not Trusted by the King, but sent to several Prisons.

The Earls of *Lancaster* and *Hereford*, withdrew from *Glocester* and went North: The King follow'd them with an Army, wherein were the Earls of *Angus* and *Athol*, and at *Burton upon Trent* gain'd a Compleat Conquest: The Sheriff of *York* intercepted them in their Retreat, took the Earl of *Lancaster* with other Lords, and brought them Prisoners to *Pomfret*.

Upon this Victory follow'd a dreadful Scene of Executions; the Earl of *Lan-*

caster was beheaded before his own Castle. The Lord Roger Clifton, the Lord Warrein Lisle, the Lord William Tucket, Thomas Maudit, Henry Bradburr, William Fitz-Williams, William Lord Cheney, Thomas Lord Mowbray, Foseline Lord Danyl, were all executed at Yerk; shortly after the Lord Henry Tryes was taken, drawn, hang'd and quarter'd at London; the Lord Aldenham at Windsor; the Lords Badlesmore and Ashburnham (says Daniel) at Canterbury; the Lord Gifscrd at Gloucester. All their Estates and Inheritances were Confiscated; and this was the first Blood (says Daniel) of the Nobility, that ever was shed in this Manner in England, since William the First; which being such and so much, as it open'd Veins for more to follow, and procur'd a most hideous Revenge, which shortly after ensu'd.

But (says Daniel) afterwards being at Leisure, in a Calmer Humour it seems, he began to have a Sense of the Execution of the Earl of Lancaster, which he discovers now upon this Occasion: Some about him making earnest Suit for a Pardon to one of the Earl's

Earl's Followers, (a Man of mean Estate) and preising him hard thereunto, he falls into a great Passion, exclaiming against them as unjust and wicked Councillers, which could urge him so to leave the Life of a notorious Varlet, and wou'd not speak one Word for his near Kinsman the Earl of *Lancaster*; who, *said he*, if he had liv'd, might have been useful to me and the whole Kingdom. The Reader may make his Reflections upon this Story without my Assistance. Gratitude is a very strong Tie with all except Brutes, and I have known a pardon'd Rebel make the best Subject.

Let me also add, That those who are nor willfull, but accidental Rebels, and are Taken in Arms for one they believe to be their Lawfull Prince, tho' they are so unfortunate as to be mistaken; ought to be tenderly us'd: for they are best Blood in the Nation; they are men willing to sacrifice their Lives for Justice; and of such Men, a Prince ought not to be afraid, he has nothing to do but to clear his Title, & he is sure of making them his firm and lasting Friends. "Tis true *Henry the Seventh* did not love such Men, because he

he was an Usurper, and therefore he cut off the bravest Man in that Age, for an Expression which would have endear'd him to a Lawful King.

I cannot forbear saying, when a Prince destroys such Men, he pours out his own Vitals; and bereaves himself and his Kingdom of their best Supports.

I am sure in the Body Natural it's proper to keep the best Blood, and part with the bad. But some Politicians will not allow this to hold good in the state; they are for pouring forth the rich Blood of a Nation like Water in our Streets; and for maintaining a crude and indigested Mixture of Heterogeneous peccant Humours, which in the End must Ruin the Patient, and lay the Foundation of Infinite Diseases which will infallibly over-run the Body.

Does any Man think, that because a Rebel may sometimes find his Interest in joyning with a Lawful Prince, that he is therefore to be encourag'd? Cou'd those Presbyterians who brought in *Charles II*, forg t their Rebellion? Did they not endeavour to pull down with one Hand what they built up with another? And

are they not at this Day, the most bitter Enemies to his Family ? Alas, the very Loyalty of such Men is Rebellion, because it proceeds from that Principle, and their pretended Honesty is no more than Occasional.

I hope the Reader will pardon this Digression, which I was lead into, by contemplating the Folly and Rashness of King *Edward II*, in pouring fourth so much Blood, which afterwards prov'd his Ruin, and he liv'd to want it for his own Defence. Such Executions only pour Oil upon the Flame, which at last spread even to his Sacred Person, and brought him to an untimely Grave.

I cannot therefore but blame the crude Politicks of those Men, who direct a Prince to maintain a Crown by mere brutal Force, without any regard to the Love and Affection of the People. Revenge will be the continual Subject of their waking Thoughts and of even their Dreams ; while the Tyrant sleeps under the Durance of Bars and Chains, and perhaps with a Treacherous Guard.

But this Observation I have made in the World, That Minds continually fix'd upon

upon Revenge, will sometime find an opportunity to Exercise their Fury upon those they hate, who perhaps vainly fancy themselves secur'd from the Efforts of unarm'd Malice, and impotent Rage.

Away then with Machiavellian Politicks, only adapted to gratify the Disposition of a Cruel Monarch. They will never make a Kingdom flourish or answer the Ends propos'd.

How unhappy did these Politicks prove to *Edward II.*? A few Years shew'd him the Difference between the Love of his Subjects, and a Servile Conquest, which alas! was only like the glaring Light of Sun entring into a Cloud, when its Glories were just about to be overwhelmed by a Tempest.

I would have the Reader observe, That Acts of Indemnity have never done hurt, and never more good, than when offer'd to Rebels in Arms.

I would have the Reader consider the Conduct of *Richard II.* in that terrible Rebellion headed by *Wat Tyler.*

The Wretches omitted no barbarous Cruelties that Madness and Rage join'd together could inspire them with, not omitting even Rudeness and Incivility to the Person of the King; who was forc'd for some Time to comply with their Demands, and let them take out of the Tower his Friends and execute them before his Face.

The King with one Act of Grace out of Sixty Thousand Men dissipated Ten Thousand, and sent them to their Homes; a Victory which cost him not one Drop of Blood, and yet was more compleat, than if he had sent his Guards to cut them in Pieces; because he gain'd so many Hearts by his Clemency, which his Sword would have Depriv'd of all Possibility of being either his Subjects or his Friends.

The rest he won by Presence of Mind, and Condescension, and after the Death of their ~~Leader~~ *Tyler*, a new Pardon entirely dispers'd the rest. ~~Leader~~

Some of the Nobility gave pernicious Council, and I suppose at the Bottom were no great Friends to the King; they advis'd him to hang Four Hundred by way of Terror, which the King would by no

no means consent to ; but only order'd that the City, should give them no Entertainment, and that the Heads of them should be apprehended and legally punish'd.

Norfolk, Cambridge-shire and Suffolk were at the same time infested with Rebellions, carried on with an equally cruel and barbarous Hand : Yet were they suppress'd by the Bishop of *Nrwich*, at the Expence only of their Leaders without imprisoning, starving in Jayl, and harrassing with Tryals, the poor mistled Commoners, who were dismissed with Impunity.

The next Reign, (if it be lawful to call it one,) was stain'd with innocent Blood, and darkned with the Executions of Men, who bravely stood up in the Defence of Justice. They were branded with the odious Name of Conspirators ; and their Heads adorn'd *London Bridge* with conspicuous Monumens of unfortunate Loyalty ; of which even Dr. *Kennet* is pleas'd to say, that tho' a just Punishment, it favour'd so much of Cruelty, that many grave Men were discontented at it, and spar'd not to say, *That in a short time they should wish, they still had King Richard*

chard for their Governor, the Faults which proceeded from his Remissness and Mildness being more tolerable than the Cruelty of their new King.

And where did this Cruelty stop, but in the Murther of the abandon'd King.

However, *Henry IV.* tho' hated by the Clergy, did not think fit to execute the Bishop of *Carlisle*, but granted him a Pardon, and, us'd him as a Man of Honour, who had ever been his open, fair and candid Enemy; and in all Probability Archbishop *Scroop* would have met with the same generous Usage, if he had been ever equal and just to his Principles: But he was one of the Compliers who introduc'd *Henry IV.* to the Crown, and upon being disoblig'd, turn'd Loyal to gratify his Humour; and perish'd in the Cause. (x)

I must needs say, the Execution of Clergy-men is the most impolitick Step a Prince, unles in Cases of extreme Necessity, can take: Their Order is sacred, and

(x) Ap. N. 2.

Violence offer'd to their Persons is generally interpreted Violence to the Messengers of God; and consequently to him, whom they represent; their Crimes sure ought to be very notorious, which can break thro' a Character of that Nature. Moreover, the Faults of such Men are better conceal'd than expos'd in such a Manner, as may cast a Slur upon Religion, or induce Contempt upon that Sacred Order.

If we consider how decently the Vestal Ladies were executed under Ground, that the People might not see them or think of their Crimes; we shall find it was done in Respect to their Character. How different is this from dragging a Presbyter of a Christian Church in a Cart to *Tyburn*, to share a Fate adapted to Felons and Murtherers. A Spectacle of this Nature, I once beheld with my own Eyes, and I thought Hell, Chaos, and Earth had shaken Hands together.

This makes me wish that the Laws of our Country, in that respect, were in some Measure regulated; that Religion, which is the firmeit Cement of the Laws, may not be brought to Contempt,

If Punishment loses its End, it ceases to be Punishment, and becomes Rack and Torture upon the Bodies of Men; but if the Punishment is so contrived that it hardens and encourages the Spectators, it most certainly loses its End.

An Execution of this Nature, is only preaching to the Spectators in this Manner; Gentlemen, you see here, that Religion it self is a Cheat; those Persons who us'd to advise you with so much Earnestness to be regular and good, are resolv'd themselves to give no Examples of this Nature; they believe nothing of the Story, as you may plainly see by this Gentleman, who is going to suffer for what he earnestly advis'd others to avoid.

Surely such a Speech would be an Encouragement to others to cast away the Fears of another World, whatever they pretend in relation to this; and 'tis my humble Opinion, when the Fear of eternal Death is taken away, *Tyburn* will grow into Contempt.

Does any Man think it would not make an admirable Jest, with the Candidates for that Post, to see *Paul Lorrain* himself attend them in a worse Capacity,

than that of Chaplain; suffering for those Crimes he has often exhorted others against; would not this be a great Consolation to the Melancholy Tribe in their last moments, and an Incitement to some of the Spectators to go the same Way;

I have made this Digression upon the Account of the Bishop of *Carlisle*, who had the Happiness to feel some Influence of *Henry IV*th's Clemency, or rather Cunning. That Prince knew such Executions could not please the People: For when Learning, Piety and Integrity center in one Man, and he is distinguish'd for that only Reason to be hang'd; 'tis such a Sacrifice as is worse than making our Children pass thro' the Fire: 'Tis a Preliminary the Devil generally insists upon, before he enters a formal Treaty with a Nation. He knows very well they must comply, and that when they have left their God, they have no where else to fly for Protection, but to him.

To return to the Clemency of *Henry IV*. when a more dreadful Insurrection broke out, under the Conduct of the Earl of *Northumberland*; before he engag'd, he first tried all amicable Means: He did not imme-

immediately fall without any Remorse or previous Treaty upon his Countrymen, as if he wanted an Excuse to put as many as he could to the Sword. "Tis true, when he was forc'd to fight, he beat them, and took Prisoners the Earl of *Worcester*, the Baron of *Kinderton*, and Sir *Richard Vernon*, whom he beheaded.

But the Earl of *Northumberland*, who was not in the Battle, but retir'd to *Warkworth*; upon a Message from the King to require him to submit to Mercy came into him at *York*. The Consequence of which was, that he sav'd his Life, tho' he kept him in Prison till the Ferment of the trouble was over, and then restor'd him to his *Liberty*; but depriv'd him of his Estate and Honour for the present: Yet afterwards restor'd to him even that, so far was he from taking Advantage to be cruel and oppressive, or at least so bad, as some since have been; particularly *Oliver Cromwell*.

Thus ended for that time the Struggles for the dying Liberties of the Nation, and the whole was clos'd with a Pardon. (y)

I would have the Reader observe, that during these Confusions, *Henry IV.* took particular Care to prevent the Licentiousness of the Soldiers, and others in plundering, which may be seen in the Appendix. (z) :

For surely it is Madness in a Prince, who designs to keep a Kingdom, to encourage the Spoils committed in his own Dominions: 'Tis the same as if a Man should burn and waste his own Estate, tho' in the Hands of one he expects to recover it from. For the worse Usage it receives before, in the worse Condition will it come to his Hands.

'Tis surely barbarous for a Prince to use his Subjects like foreign Enemies, and expose even the Innocent and the Guilty to the Insult of a military Force; which in my Opinion is the worst Discipline a Nation can come under.

However, the Usurper took care, that neither the Rebels nor his own People should be plunder'd, nor their Persons and Estates be precarious for want of the Act

of Indemnity, which the Reader may see in the Appendix. The Conduct of the King towards the unfortunate *Earl of Northumberland* shall next be insisted upon; and I would have the Reader previously consider, that this Earl was the first Person who rais'd the Insurrection, was the Head thereof in its Height, and surrender'd to Mercy to the King at *York*.

(a) A Parliament was call'd in the fifth Year of *Henry IVth*, in which the Chancellor recommended to them in the King's Name the Case of the Rebels, who had been beaten at *Shrewsbury*.

This was no Recommendation to have 'em hang'd, or to impeach them, after they had the Misfortune to be Prisoners of War, but to pass an Act of Oblivion. On *Friday Feb. 18.* the Earl of *Northumberland* came into the Parliament before the King and the Lords, and there by his Petition to the King acknowledg'd to have done against his Allegiance, and namely for gathering of Power, and giving of Liveries,

(a) Sir Robert Cotton's *Abridgement of the Records* 5
H. n. 4.

where-

wherefore he prayeth Pardon; and the rather for that upon the King's Letters he yielded himself, and came to the King into *Yorke*, whereas he might have kept himself away.

The which Petition the King deliver'd to the Justices by them to be consider'd, whereupon the Lords made Protestation, that the Order thereof belong'd to them, and so they as Peers of this Parliament, to whom such Judgment beloug'd in weighing the Staute of *Ed. III.* touching Treasons, and the Statute of Liveries made in the King's time, adjudg'd the same to be no Treason nor Felony, but only Trespass finable to the King.

For which Judgment the said Earl gave great Thanks to the King and Lords and at the request of the said Earl, he the said Earl was then sworn to be true Liege-man to the King, to the Prince the King's Eldest Son, and to the Heirs of his Body begotten, and to every of the Kings Sons, and to their Issue succeeding to the Crown of *England*; according to the Laws; and that done, the King pardoneth the said Earl, his Fine and Ransom.

And

And on this Day the levying of War of
of the said Sir Henry *Percie* and others
was adjudg'd Treason by the King and
Lords in full Parliament,

On the said Saturday the Commons
gave great Thanks to the King in full
Parliament, for the Favour shew'd to the
Earl of *Northumberland*. The same Day
at the request of the Commons, the
King commanded the Earls of *Northum-
berland* and *Westmoreland* in token of per-
fect Amity, to kiss each other in open
Parliament, and to take each other by the
Hand thrice ; which they did, and so of-
ten they kiss'd each other as they took
Hands, being thrice ; and promised that
their Tenants and Men should do the
like.

Fryday the 22 of February at the re-
quest of the Commons, the Earls of *Nor-
thumberland* and *Dunbar*, in Token of A-
mity before the King and the Lords,
took each other by the Hand and kiss'd
one the other.

The same Day at the Request of the
Commons the King in full Parliament affir-
meth, the Archbishop of *Canterbury*, the
Duke of *York*, the Earl of *Northumber-
land*

land and other Lords, which were suspected to be of the Confederacy of Sir *Henry Percie* to be his true Liege-men, and that they nor any of them should be impeach'd therefore by the King or his Heirs at any time ensuing.

I observe with what Tenderness the Earl of *Northumberland* was receiv'd into Grace; how much the Commons of *England* Interested themselves in his Behalf, and how strenuously he insisted upon his Surrender to Mercy, which Plea evidently sav'd his Life.

The Earl however was pleas'd to try once more to reduce the Usurper to Reason, and perswade him to resign the Crown to the right Heir, by joyning with Archbishop *Scroop* in an open Rebellion, which proving unfortunate, he fled into *Scotland*.

The Archbishop, the Earl *Marshal*, with several others, were taken treacherously by the Earl of *Westmoreland*, during a Treaty of Peace. The Earl promis'd him his Safety, but when he deliver'd his Prisoners to the King, he thought himself discharg'd from the said Promise, and the Archbishop was barbarously murther'd in cold

bold Blood, under the specious Form of Law.

I am not oblig'd to justify the Earl of *Westmorland* in this Conduct. A certain great General in a late Reign (as in its Place shall be shewn) had more Honour than to suffer such an Execution to be perform'd however, deprav'd is their Sentiments of Honour, as some People at this time are, or at least seem to be.

These Men of whom I cannot speak without Indignation, have the Assurance to affirm, that an whole Body of Rebels ought entirely to be made Sacrifices or Examples : That the poor miserable People ought to be starv'd in Goals, to be loaded with Irons, and oppress'd to Death; if they have not the Favour at least to be hang'd : all which is so cruel, so unpresidened, that I think it's fit only to be Patronis'd by such Men, who are the pretended Advocates thereof and by none else.

Let them Examine what I have already produc'd, and if they please, they may go with me to the End of the Chapter; they will find our English History very thin of Presidents of a Cruel Nature.

Perhaps

Perhaps there never was a more notorious Rebellion than *Jack Cade's* for Cruelty, Avarice and Pride ; yet says Dr. *Kennet* himself, only *Jack Cade* with some of the Authors and Leaders were executed out of Five Hundred Persons, who were obnoxious to Justice and in the Power of the King.

By this ~~I have~~ time brought the Reader within View of a great Scene of Action, which made *England* the Theater of Horroure and Confusion.

The Nation for many Years had slept quietly under an Usurpation, their thoughts were little disturb'd about injur'd Heirs, or the Justice of a Cause sunk under Oppression and Misfortunes : But God, whose all-seeing eye will not ever regardless view the Cause of Abandon'd Princes, gave the Duke of *York* an opportunity to assume Pretentions, Just in themselves, and which wou'd have had the greater Appearance of being so,, if they had not been so long neglected, and in some measure slur'd by his taking the Oaths and acknowledging the Usurper.

I cannot forbear borrowing Part of a Paragraph from Doctor *Kennet*, (b) in Relation to a contrivance, mean in it self, which the Duke of York us'd to blast the Reputation of an Infant ; the Paragraph runs thus.

For Queen Margaret was deliver'd of a Son at *Westminster*, Octob. 13. who was shortly after Christned by the name of Edward, but the Yorkists who sought to establish the Duke of York and his Family in the Throne, and were hot in contriving the *Ways* to it, spake disgracefully and scornfully of this Birth, and gave it out, that the King was insufficient and unable to get a Child, and therefore it was an Adulterous Brat.

But others thinking this Slander too notorious, because the King was not above two or three and thirty years old, and might well enough be suppos'd able to father a Child, unless a natural Impotency could be prov'd against him, which neither was, nor could be ; denied not that there was a Child ; but dying soon after its

(b) *Kennet's History of England*, Vol. 1. p. 410.

Birth, the Prince had another Child put in it's stead. The King and Queen were much disturb'd at these vile Reports of their Enemies, but the King was not at all displeas'd with the Queen, which shew'd he had no Suspicion of her: And it cant be reasonably suppos'd, that a Person of such eminent Piety as the King was allow'd to be, by his Enemies; would be privy to so ill a Design, as to accept of another's Child for his own; so that the Satisfaction which the King took in the Birth of the Prince, and testified in Feasting the Court, and creating divers Noblemen (as his two Bretheren by his Mother's Side, he made Edmund Earl of Richmond, and Jasper Earl of Pembroke) must be allow'd Arguments sufficient to clear the Queen's Innocency with all Impartial Persons, tho' they would not satisfy their Enemies, who were resolv'd to deprive both Father and Son of the Crown.

Perhaps Doctor Kennet has here cast a Bone in his own way to pick, which I leave to his serious Consideration. I shall only observe, that nothing could be more infamous in the Duke of York than to blast the Fame of those unhappy People,

People, who had Affliction enough, otherwise, without Lies of such an improbable Nature.

Could any thing be worse than to injure an Infant in it's Nurse's Arms, even recent from the Womb.

To defame a Prince renown'd for Piety of Life and peculiar Integrity; And to blast the Character of a virtuous, tho' unfortunate Lady.

Sum up all these Crimes into one Fact, and see if all the Powers in Hell can match it.

But to return from my Digression, which I must desire the Reader to pardon, because it was design'd for his Benefit.

(c)

The Duke of York, at last, took up Arms, and reduc'd the King to an inglorious State of Servitude: He was a Prisoner at large; he had the Name of a King, and the Duke of York had the Power.

A Pardon was the Consequence for all Treasons committed: A Pardon the most

exact, perhaps of any that ever was penn'd; clogg'd with no Exceptions, but it included Fines, Amercements, and in short all manner of uneasiness; under which the Subject could labour; and I think it deserves to be a President for all Pardons since.

The Usurper *Henry the 4th*, issu'd out a Pardon with an ill Grace: *Henry the 6th*, by Perscription, was almost ingrafted into a Right; besides the Latter was a Man of Piety which the other was not.

I would have the Reader observe that in *Jack Cade's* Rebellion, a Parson was taken, but the King's Piety was so great, he would not suffer him to die, but granted him a free Pardon, which I have set down in the Appendix, for any Man to read without Spectacles. (d)

There was also a Tumult, in the 35th Year of his Reign, which gave the poor unfortunate Prince an Opportunity to shew, that he had more Goodness and Mercy than Usurpers of the first Rate ge-

(d) Ap. N. 6.

nerally have : He hang'd onely Three for the same Riot.

In short, 'tis Mercy alone which secures a Throne, whether procur'd by Violence, or by the Gift of God. Acts of Oblivion have dispers'd more Rebellions, than the open Violence of the Sword. Thus *Henry the VIth.* sent a formidable Army home, under the Conduct of the Duke of *York*, an injur'd Rival. What Blood perhaps wou'd have stain'd the Western Plains if such mild Usage had not been recurr'd to ? As for the private Soldiers, (says Dr, *Kennet*) who by the Retreat of their Leaders, were left to the King's Mercy, they were all pardon'd, except some few, who being remarkable for their Forwardness in their Rebellion, were some of them fin'd, and others, hang'd and quarter'd.

I do insist upon it, that private Centenels and Servants, unless in a Storm, are not liable to be punish'd with either Death or Imprisonment. They are the Instruments, and not the Contrivers of a Rebellion, and the Custom of all Nations has been to dismiss them, unless e. War is not ceas'd, and there is a Possi-

bility of their being again employ'd to the prejudice of those under whose Power they are.

The Consequence of this Misfortune, was the Attainder of the Duke of York, his eldest Son, the Earl of *March*, with several others. As the Act of Attainder is tedious and very long, I shall give the Reader Sir *Robert Cotton's* Abstract, as I find it in his Abridgment of th Records.

First, A Commemoration of the King's great Care in bringing the said Duke up and of the manifold Benefits to him shew'd.

The Confederation of the faid Duke with *Jack Cade*, to be advanc'd to the Crown. The Duke's coming out of *Ireland* with Force to the King's Court and presence ; the Duke's Practice to be Protector. The Duke's Intent to raise an Army against the King at *Dartfort* in *Kent*. His Submission and Oath to the King in *Paul's* after the same.

The Duke's Oath at large..

The Duke's Confederacy with the Earl of *Warwick* and *Salisbury*. A Rehearsal of the King's sundry Benefits shew'd to the two Earls.

The

The Battle St. Albans, at what time the Duke of Somerset, the Earl of Northumberland, and the Lord Clifford were slain, and Pacification made by the King between the Heirs of the said Duke and Earls slain, and the said Duke of York and the two Earls.

The King's Pardon granted to the said Duke and two Earls, and their Promises of due Obeysance, with Renumeration of sundry Benefits to them after shew'd.

The Ambition of the said Duke and Earl's; their new Oaths and Promises made to the King; their Polices in not coming to the Council; their readiness in coming together being far a funder.

The Expedition of the Earl of Salisbury, with Thomas and John Nevill Knights, Sons of the said Earl; Thomas Parkin; William Stanly, Esquires Sons to Thomas Lord Stanley; and Thomas Oringe of Tongue, in the Country of York, with some Men and Banners display'd on Blore Heath, on the Feast of St. Matthew, Anno. 37.

James Lord Audley slain at Blore Heath in Staffordshire by the said Earl and John Lord

Lord Dudley, with sundry others taken Prisoners. The King pursuing them by the space of 30 Days and Nights. The King's Pardon to them offer'd and refus'd.

The Assembly of the said Duke, Edward Earl of Marc', Richard Earl of Warwick, Richard Earl of Salisbury, Edmund Earl of Rutland; John Lord Clinton, John Wenlock; James Pickering, John Coniers and Thomas Pane, Knight; John Boughier, Edward Bourchier, Esquiers, Nephews to the said Duke. Thomas Colt of London Gentleman; John Clay of Chishunt in Herefordshire, Esq; Roger Egerton of Shrewsbury, Esq; and Robert Bold Brother to Henry Bold, Knight, who with sundry others, pitched their Field at Ludlow in the Country of Hereford on Fryday, the Vigil of the Translation of St. Edward, in Anno 38.

The Duke pretended to his Company, that the King was dead, for whose Soul Mass was laid in the Duke's Camp.

The King's Expectation of the Duke. The Duke's Ranging in Battel. The fortifying his Ground with Carts and Guns just before his Eschirmishes made

His Ambush laid. And his Meaning suddenly to have surpris'd the King's Host.

The Departure of the said Duke and Earl out of the Field about Midnight, under colour to repose themselves about *Ludlow*, and their Flight into *Wales*, for that their Army fainted and submitted themselves unto the King, who granted to them Pardon.

The Attainder of the said Duke, Earls, and others aforesaid Persons, as Traytors. *Alice*, the Wife of *Richard Earl of Salisbury*, *William Oldhall*, Knight, and *Thomas Vaughan* of *London*, Esq: were attainted as Traytors.

All and singular the Hereditaments of the said Duke, and others attainted in Fee, or Fee-tail, are forfeited.

Richard Gray, Lord *Powis* *Walter Devereaux*, Esq: and *Henry Radford*, Knight, ~~being~~ being in the Field with the Duke at *Ludlow*, are pardon'd but all their Hereditaments as before, and other Profits are forfeited.

Sundry Provisions, as well for Goods as Lands; as touching the Forfeiture of the Lord *Gray*, and Sir *Walter Devereaux*, the King would be advis'd.

We

We may find here that Attainders were grounded upon evident Matters of Fact, specified with all their Rebellious Circumstances , one wou'd think by this Act, the Duke of York had done but just enough to draw down an Act of Attainder upon him.

I remember I once read an Act entitled, *An Act for Attainder of the pretended Prince of Wales*, and there was one Fact therein charg'd upon him which he could not be guilty of, viz. Contravening the Acts of Parliament made for settling the Succession ; which Acts as I remember were subsequent to the Attainder, or at least, just upon its heels. This mistake I attribute to the profound Concern, the Compilers of the Act, were in, to preserve our Religion, Laws and Liberties.

I also obserue, the said Perlon just now mention'd, cou'd be but just past Thirteen Years of Age when he was suppos'd guilty of the Fact for which he was chiefly attainted. If he had been as old as the Duke of York, he had been less excusable in the Eye of these Acts. But I must needs say at those Years, few but himself were so forward to deserve such a Fate.

An

An Act of Attainder pass'd against Henry VI. in the same manner as had before against Richard Duke of York, from whence some remarkable Passages may be extracted not utterly Foreign to our Dispute.

Henry VI. had undoubtedly Possession of the Throne, yet he was attainted for Murthers committed by him during that Possession.

He had a Parliamentary Title, Perscription, and the Acknowledgement of Foreign States and Princes.

Yet was he attainted for not only the Murther of the Duke of York in the Field of Battle fighting for his Crown, but of the Earls of Rutland and Salisbury, the first of whom had his Brains beat out barbarously by the Lord Clifford, and the latter, after surrendering at Discretion, was deliver'd up a Sacrifice to the Common People, and beheaded. The Lord Bonnevil and Sir Thomas Kyriell surrendered to Mercy, and were cut to Pieces by the Order of the Queen.

He was also accus'd for making a Peace with the King of Scots, to exclude the Earl of March from the Crown.

Thus were these unjustifiable Facts blasted by the most memorable Acts of our Constitution, by a solemn Declaration of the Lords and Commons, that they were basely and unjustly murther'd.

When *Edward* seem'd fully settled upon the Throne, securely possess'd of what even length of time had almost adjug'd away from him. But he issued out a compleat Pardon for the Duke of *Somerset* and Sir *Ralph Piercy*, and a general one for all those who would submit to him, which may be seen in the Appendix.

But indeed this Act of Indemnity was clog'd with an unreasonable Term in the Opinion of some People, who were very unwilling to trust to a Man's Word and Honour, who had before given ill Specimens of good Nature ; and some are apt to believe the Wolf lay under Disguise below ; while Affection, Clemency and Candor appear'd above.

Indeed by this time both Parties were so much exasperated, that they made it even customary to cut off Persons of Honour

nour and quality in cold Blood : All this was owing to one unhappy Execution of *Thorp* at *Highgate*, which Action drew on the Spirit of Revenge, and prov'd the Death of many brave Men ; tho' I think it's very barbarous in a Prince from such a base Motive, to run the Hazard of a Friend by Reprisals. The Blood of Loyal Subjects is the richest Treasure a Prince can have, which must never be brought out but upon the greatest Occasions, because 'tis a long time recovering, and requires some Years to recruit : However the case is alter'd, when a Prince takes upon him the Office, like a Person sent to destroy Vermin from Corn, 'tis excusable in such a case, to lay as many traps in the way as he can, and to spread his nets to destroy them by Shoals.

If the Reader farther meets with barbarous Executions in cold Blood, let him consider from what Steps that unhappy Conduct proceeded, and let him learn to entertain a just Abhorrence of such Measures for the future.

Edward, a Prince form'd for no cruel Councils but rather for the soft Em-

braces of a Mistress and the Charms of Love, was betray'd unawares into Bloody Councils, from which he could not easily withdraw his guilty Steps: This turn'd a gay easy Temper into Moroseness and Severity, and was the Source of those Misfortunes, which plung'd him as deep as he had been rais'd high before.

The Earl of Warwick, who took a Pride in making and unmaking King's pull'd down the Power he had rais'd before. Edward was detested, abandon'd by his Subjects and foreign Friends, and us'd in the same manner as some have been since; I coul'd easily find another Edward, another Duke of Burgundy, and another Warwick, if I had Time, Leisure or Opportunity to make Comparisons. The Duke of Burgundy's Conduct is so well describ'd by Habbington, that I should do the World an Injury to supress it.

This Aspect full of smiling Flattery did the Duke of Burgundy bear to the present Fortune of the State; while upon King Edward he cast such a supercilious Look as the Worlds Wise Men usually do.

do upon Men in Adversity; often sharply, he reprehended his so great Carelessness and Neglect of wholesome Advice, which had ruin'd him and oblig'd him to this so wretched Flight; he objected the much Contempt this so great Misfortune woul'd throw upon his Quarrels, and how loth Friends would be to adhere to his present Necessities, since he knew so ill to manage Prosperity, yet remembering that hereafter there might happily be a Change in Fortune, he often chang'd his Humour, and amidst these Reprehensions mingled some passionate Compliments of Love; he protested seriously that he wiss'd all Happiness to his Affairs, to advance which he would n'gleet no Industry, yet he desir'd his Pardon; if for the present he dissem-bled, considering it might at once draw on a War from his Two most dangerous Neighbours, England and France, against both which Nations should he be necessi-tated to a Quarrel, he should be very unable to defend himself, much less to serve another: And wken a Proclamation was set forth by the Duke prohibiting his Sub-ject, any way to aid the Pretences of King Edward or his Faction; and that it was

with much Indignation receiv'd by the King ; he protested the Intention of it to be only to betray King Henry to an unsafe Security ; that in the Interim, he might without Suspicion levy a greater Aid for his Designs.

The King fell into the deepest Plunges of Despair, he had no hopes from abroad, and at home an Act of Attainder was pass'd against him, and he who was a Monarch one Day, was a Rebel the next ; such are the Vicissitudes of human Affairs.

But as Providence would not suffer the *Lancastrian* Line to prosper long, the exil'd Prince return'd home, march'd to *London*, and took *Henry VI.* Prisoner.

But tho' flush'd with the present Indulgence of Fortune, he had an Enemy at his Heels, whose implacable Malice was not easily conquer'd : he therefore united the Hearts of the People to him with a general Pardon ; he suffer'd no sorrowful Countenances to obscure the Glories of his Triumph ; but he gave even his most bitter Enemies opportunity to assume dissembled Joys, and appear outwardly his best Friends ; he did not

not care to fix his Eyes upon unhappy Criminals, and insult Men in Chains, going to receive Sentence of Death ; his natural Temper was mild, mercifull and good ; and he got more Friends by this Act of Mercy, than by the Terror of his Arms : his Rage and Violence in his hot Blood, were not altogeather excusable : But still there is some Difference between that, and having Months to cool upon the matter. His Cruelty at the Battle of Tewksbury was the over-boiling of Choler, and the Blood he shed upon that Occasion, and his Violation of the Sanctuary of God was severely afterward return'd upon his Iffue.

Perhaps no History of matter of Fact ever so remarkable display'd the just Judgment of God as this.

The King suffer'd the Dukes of Gloucester and Clarence, the Lords Dorset and Hastings, to murther Henry the Sixth's poor unfortunate Son Edward, taken Prisoner in that Battle.

Edward the Fourth's Two Sons about the same Age, where murther'd by the same Duke of Gloucester, who also was the Butcher of his Fellow Executioners,

was himself finally destroy'd by the next surviving Kinsman of the murther'd Prince, if we can without any Prejudice to Justice call him such. (d)

These barbarous executions were stop'd by a general Pardon, which included all, except the Duke of *Exeter*, the Earl of *Pembroke*, *John Owen* Gentleman, *Thomas Fitz-Harris*, *Hugh Mull*; a very small Number, considering how many had been involv'd in the Guilt of those Confusions,

But one Part of his Conduct must deserve Animadversions as an Act of Treachery and Cruelty, and will make his Name ever odious while History endures. (n)

The Bastard *Falcombridge* landed in *Kent*, and march'd to *London*. But the City making a too vigorous Defence, he was pleas'd to retire, and with Nine Hundred Men fortified himself in *Sandwich*; but upon the King's Approach with a powerful Army, they sent Sir *George*

(d) *Rym's Federa* Vol. II. p. 719.

(n) *Habington*.

Brook to acquaint his Majesty with their Desire to return to his Obedience, if they might by his Pardon, be restor'd to their Lives and Liberties. They protested it was no Fear, or present Necessity induc'd them to this Submission, having Confederates enough to relieve them from this extremity; and for the present, Victuals for six Months, and Ammunition to oppose any Assault. If this Offer might be accepted, they would give up with themselves, the Town and Cattle, together with all the Shipping in the Harbour; if not; Necessity would force them to their own Defence, and if they must die, they would sell their lives, at so dear a rate, that the King might repent his purchase, considering he had kill'd so many, who would have been so bold to have fought his Quarrels, and lost so commodious an Haven Town; for they were resolved to see both consum'd with themselves, that the Victory might be no Triumph to the Conqueror, and Conquer'd might have Comfort in their Ruine.

The Proposition was accepted; but he was so far from standing to this agreement made with the said Rebels, that he

he hang'd Spicing and Quintin; two of the Chief of this Rebellion, at Canterbury, and directed a Commission of Oyer and Terminer to the Lord Denham and Sir John Fog, to inquire against all Offenders in the last Rebellion, and to inflict on them either Corporal or Pecuniary Punishments ; but the Commissioners, who understood both the Necessity and Intention of the State, made rather Choice of the latter, knowing Death woud but incur the Sentence of Cruelty, and no way advance the King's Benefit.

I must needs say the Resolution of those Men was noble and great ; but it was their Fault to trust a Prince, who had given several Specimens before of dishonourable Practices : But as the Sword was in their own Hands, and they could have sold their Lives dear, *Edward* got no Reputation by sending a Commission to hang them. However, I cannot so heartily pity them, because they had Opportunities of knowing King *Edward* better than to trust him.

I shall bring the Reader next to the Revolution in King *Richard's* time, who was kill'd in Fight, and the House of

Lancas-

Lancaster once more got the uppermost, and one Usurper devoured another. (b.)

Henry the VIIth was no sooner settled upon the Throne, than he attainted not only the deceas'd King *Richard*, but the Chief of his Adherents.

From which Act I observe,

First, That the Preamble runs, That the Duke of *Glocester's* Crimes were the shedding of Infants Blood, and naming himself by Usurpation, King *Richard* III. and that those Crimes were committed both against God and the King. Notwithstanding at that time King *Richard* was in full Possession of the Throne, and according to some Men, consequently lawful King of *England*.

Secondly, That the Treason consisted in endeavouring the Destruction of *Henry* VII. before he was King *de Facto* in *England*. This was call'd the levying War,

First, Against our Sovereign Lord.

Second, And his true Subjects.

Thirdly, Upon this, *Richard* and his

Adherents. were attainted for High Treason.

Fourthly, It was provided the Lands and Tenements were not compris'd in this Act, which they were seis'd or possess'd of in Right of their Wives, but that the Right of the said Lands, &c. so remain in their Wives, and they to be, at their Actions, Recoveries of the same.

This Act perhaps deserv'd Consideration some time since, when the unhappy Gentlemen, who were in the late Insurrection, had the Fate to be attainted or prescrib'd. *Henry the VIIth* was a Politick Prince, and it is no Shame for a Modern to tread in some of his wise Steps.

Upon the heels of this Act of Attainder, a general Pardon follow'd; not put forth by the means of the Parliament, (as the Lord *Bacon* observes,) but by Royal Proclamation, as being proud of recommending himself to the love and esteem of his Subjects in such a manner, and as being unwilling to have any sharers in the grateful Acknowledgments of the People.

He exercis'd upon this Occasion no unjust or unnecessary Severity. The Persons

sons attainted, and whose Estates were confiscated, had been guilty of notorious Crimes.

However those Confiscations satisfy'd his Thirst after Money. He made no Application to his Parliament for new Supplies ; he had no back Reckonings or future Prospects to plague them withal.

My Lord Bacon observes, it was his peculiar Art to fight more with his Pardons than his Sword, by which Means he secur'd many Victories without hazard or los of Blood. Thus that Lord observes, That a Pardon did more *Mischief* to *Lo-
vell*, when he *Rebell'd*, than his *Or-
donnance*, and without a Blow, gain'd an in-
tire Defeat over him. (i)

I think none but *Humphery Stafford* was executed in this Rebellion.

Lambert Simnell next appear'd upon the Stage, was crown'd King at *Dublin*, and Invaded *England* by the direction of the Earl of *Lincoln*, with some others, but he was defeated and taken Prisoner at *Stokefield*.

(i) Ap. N. 20.

The Earl of *Lincoln* and other Leaders in this Rebellion were attainted; but I observe the same Act which attains them, mentions *Lambert Simnel* with a due regard to his Innocence and Youth and with an Eye of Pity. He was look'd upon as a Fool and not worth attainting, or at least he did not deserve it, and when he was taken, he had a Post bestow'd upon equal to his Birth. *Henry* in this shew'd both Prudence and Greatness of Soul. He betray'd no Consciousness by trembling Speeches and hasty Messages to his Parliament, as tho' the Danger lay so much in *Symmell*, as in his Adherents and pretended Friends.

He proceeded against the Rebels more by way of Fines than Halters. He had no Stomach to hang a Man; because it brought no Money into his Coffers, and made him more hated than Rich, and he car'd not how few Enemies he had of any sort whatsoever.

His Policy in regard to the *Cornish* Rebellion is an Instance of this Nature, as my Lord *Bacon* observes. He very well foresaw that it was a dangerous Triplexity to a Monarch, to have the

Arms

Arms of a Foreigner, the Discontents of Subjects, and the Title of a Pretender to meet.

Nevertheless he took the most prudent Methods to obviate these Mischiefs. He beat the Rebels at *Blackbeath* to such purpose, that he either kill'd or took 16000 Men, yet did he execute but Three, and pardon'd the rest by Proclamation; and these Three were the Lord *Audley*, who headed the Rebellion, with *Fammock* and a Blacksmith who rais'd it; so well did he temper his Passions with Prudence, for this Conduct could not be the effect of good Nature. He was cruel in his Temper, as was plainly shewn in the Murther of the Earl of *Warwick*, but he consulted his own Peace and Safety before his Revenge.

My Lord *Bacon* has this remarkable Paragraph concerning Henry the VIIth's Clemency in this Rebellion.

It was a strange thing to observe the Variety and Inequality of the King's Executions and Pardons, and a Man would think it, at the first, a kind of Lottery or Chance; but looking into it more nearly, one shall find there was Reason for it, much

more perhaps than (after so long a distance of time) we can now discern: (in the Kentish Commotion (which was but an handful of Men) there were executed to the number of one Hundred and Fifty, and in this so mighty a Rebellion, but Three; whether it were that the King put to account the Men that were slain in the Field, or that he was not willing to be severe in a popular Cause, or that the harmless Behaviour of this People (that came from the West of England to the East without Mischief almost, or spoil of the Country) did somewhat mollify him, and move him, to Compassion; or lastly, he made a great difference between the People that did Rebel upon Wantonness, and them that did Rebel upon Want.

Thus far my Lord Bacon, who might in some Measure be in the right; but I am apt to think the Principle Motive was Experience, which taught the King that the People lov'd him not one whit the more for his Cruelties and Oppressions.

The like Measures he took in *Perkins's* Rebellion, he only executed a very few Ringleaders, and pardon'd all the rest; even *Perkin* himself was not brought to Town ignominiously with Ropes tied about

about his Arms, but in a general Manner, as tho' the King scorn'd too much to insult the Unfortunate.

I have observ'd several times in the body of this Treatise, that our Kings were never forward to execute the Clergy, as particularly in relation to a Friar engag'd in a notorious Cheat to set up a Person to represent the Earl of *Warwick*, yet would not the King be prevail'd upon but to Pardon him, altho' his Crime was of the most dangerous Nature, such as touch'd the King in the most tender Part, his Ambition, and the Passion for the Enjoyment of a Crown.

I have also observ'd in the Histories of former Ages, the respect Princes had for Places of Sanctuary, nor would they tear their most bitter Enemies from thence ; yet in my remembrance, a Church has been so far from a Sanctuary, that it has been made a Prison and I believe some *Preston* Gentlemen would have been laugh'd at, if, in their Trials, they had pleaded their having been taken out of a

Church. It might have been good Divinity, but wretched Law. (k)

However, God ought not to be contemn'd, because he is able to punish ; and how much soever he may despis'd at a distance ; when he frowns and darts his Anger thro' the Skies, the Children of Men are ready to call upon the Mountains to cover them from his Rage.

To return to our purpose from whence this Digression is made. *Henry VII.* died in Peace, and left a flourishing Kingdom behind to a Monster for Cruelty and Violence ; yet Monster as he was, he treated the Northern Rebels with Humanity ; he offer'd 'em a Pardon, which not being intirely accepted of, the Duke of Norfolk acted some Tragedies, which King *Henry*, when he heard, clos'd with a General Pardon. Thus the Death of some few put an end to all those Confusions, and even those few were thought by *Henry* too many to perish in cool Blood.

(k) *Lord Herkert's Life of Henry VIII.* p. 466. 427.
328.

(a) If we take a View of Queen Elizabeth's Conduct, we shall find that tho' she wanted not her Fathers fierceness of Spirit ; she Acted very calmly in the Northern Rebellion. *It's* true ; *as* she had entred into no Contracts with those Rebels, They were all under her Mercy ; yet after she had Executed Some of the Heads, and prescrib'd others who had Estates, those who had none, were dismisse'd with Impunity.

(b) Immediately after, another Rebellion arose from the Ashes of the former, which was as soon Extinguish'd without spilling one Drop of Blood ; *Leonard Dacres* the Head thereof fled into *Holland*, and the Queen pardon'd all the Multitude, whom he had seduc'd into a Rebellion.

Thus have I given the Reader, a detail of the most remarkable Actions, with Rebels since the Conquest, till those un-

(a) *Reliquis Qui fundos non habuerunt, & de Regno non Profugerant, noxa erat Remissa Camdein Elizabeth, 1569. A. p. 195. Edit. Oxon.*

(b) *Regina Multitudini Quam in Rebellionem Excitat criminis Gratiam publicato Edicto fecit.*

happy times came on which are in some Men's Memory, and will endure to their Posterity afterward.

When the grand Rebellion first began, it was more modestly manag'd. But the Surrender at *Reading* open'd a way for Disorders, which did not stop at plundering Wagons, but in executing Persons, who demanded Quarter, and erecting Courts of Judicature pretendedly so call'd, to condemn Men with the Formality of solemn Trials, who had been Loyal to their Prince. Tho' the first Execution of this Nature was, when the King was Prisoner in the Isle of *Wight*, this was Captain *Burley* who dy'd under the Notion of a Traytor, for endeavouring to relieve the King from his Imprisonment, so artful are Rebels in turning the Laws from themselves upon others.

(1)

The Rebels by this time began to be inur'd to Blood as *Colchester* was a particular Instance at that time.

(1) Lord *Clarendon*, vol 3. p. 692

The Town surrender'd to Mercy, with a particular Exception against some few whom the General should pick out.

I observe from hence, that surrendring to Mercy supposes Life, otherwise that Exception would have been unnecessary and vain : They were excluded from the Mercy, and were consequently appointed to die.

In short, to say that surrendring to Mercy, supposes a Man may by such terms be hang'd, is as much to say, Hanging is Mercy, otherwise they have, what they stipulated not for.

The next who suffer'd, were the Marquiss of *Hamilton*, the Earl of *Holland* and the Lord *Capel* Men who had surrendred to such Mercy, as passes current in these Days.

The Earl of *Derby*, perhaps the finest Gentleman in *England*, and a Pattern for his Family to follow, was swallow'd up in the same Fate.

By this time I have brought the Reader within melancholy Views, I have shewn him a Prospect of suffering Loyalty, and he may also by this time learn the Folly of surrendring to the Discretion

tion of Men, who pay no Regard to Laws.

I shall only observe, that when Men are engag'd in a Rebellion, and are afraid of going to the Devil ; they may lengthen their Fate upon any mean terms, but if they have drawn their Swords for the sake of their King and of their Country, if they surrender to Mercy, Hanging is to ~~mild~~ a Fate.

Let me only add, that when Men have their Swords in their Hands, tis' much preferable to die gloriously in the Field, than to be carried in a Cart to *Tyburn* ; and 'tis absur'd, rhat a Man should exchange such a Priviledge for a worse Consideration, to be hang'd in cool Blood.

What I here assert, I am confident must be true ; the greatest Coward on Earth going to a Gallows, would rather wish he had died in the Field.

Can we then believe, that Men with their Swords in their Hands can stipulate to be hang'd ; if that was their Intention, I shall cease to be any more their Orator.

When *Oliver's* Usurpation was compleatly annihilated by the Restoration of King *Charles II.* perhaps no Prince ever so tamely pass'd over a Rebellion as he did.

His Speech he made, pressing for an Act of Indemnity was urg'd with a more than Fatherly Affection for his People, as if his Bowels yern'd for sparing his Subjects, and he thought every Hour it was detain'd, was a Delay of the Happiness he propos'd to enjoy by the same ; such a Difference is there between the Endearment of natural Affection, and the Artificial Caresses of a self-interested Enemy.

We must consider this Speech was made but two Months after the Restoration ; yet one would imagine the Act of Grace had been so many Years upon the Anvil ; so pressing, so earnest was the King to have it pass'd, tho' they, one would think, should be more concern'd, in interest, than himself to have it done.

*His Majesty's Gracious Speech to the House
of Peers, the 27th of July, 1660, con-
cerning the speedy passing of the Bill of
Indemnity and Oblivion.*

My Lords,

“ **W**hen I came first hither to you,
“ which was within two or
“ Days after I came to *Whitehall*, I did
“ with as much Earnestness as I could,
“ both by my self and the Chancellor, re-
“ commend to you and the House of
“ Commons, the speedy Dispatch of the
“ Act of *Indemnity*, as a necessary Foun-
“ dation of that Security we all pray for.
“ I did since by a particular Message to
“ the House of Commons again pres-
“ them to hasten that important Work;
“ and did likewise by a Proclamation
“ publish to all the Kingdom, That I
“ did with Impatience expect that That
“ Act should be presented to me for my
“ Assent, as the most reasonable and so-
“ lid Foundation of that Peace, Hap-
“ piness and Security, I hope and pray for
“ to my self and all my Dominions. I
“ will not deny it to you, I thought the
House.

" House of Commons too long about
 " that Work, and therefore, now it is
 " come up to you, I would not have
 " you guilty of the same Delay. I thank
 " God I have the same Intentions and
 " Resolutions now I am here with you,
 " which I had at *Breda*, and believe
 " that I owe my being here to God's
 " Blessings upon the Intentions and Re-
 " solutions I then expressed to have: I
 " will read to you what I then said.

" And to the end that the Fear of Pu-
 " nishment may not engage any, Con-
 " cious to themselves of what is passed,
 " to a Perseverance in Guilt for the fu-
 " ture, by opposing the Quiet and Hap-
 " piness of their Country in the Re-
 " stauration both of King, Peers and
 " People, to their Just, Antient and
 " Fundamental Rights: We do by these
 " Presents Declare, That we do grant a
 " a Free and General Pardon, which We
 " are ready upon demand to pass under
 " our Great Seal of *England*, to all our
 " Our Subjects, of what degree or qua-
 " lity soever, who, within forty Days
 " after the publishing hereof, shall lay
 " hold upon this our Grace and Favour,
 " and

" and shall by any Pnblck Act de-
 " clare their doing so; And that they
 " return to the Loyalty and Obedience
 " of good Subjects, excepting only such
 " Persons as shall hereafter be excep-
 " ted. Let all Our Loving Subjects,
 " how faulty soever, rely upon the Word
 " of a King, Solemnly given by this present
 " Declaration, That no Crime whatso-
 " ever committed against Us or Our
 " Royal Father, before the Publication
 " of this, shall ever rise in judgment or
 " be brought in Question against any of
 " them, to the least endamagment of
 " of them, either in their Lives, Liber-
 " ties, or Estates, or (as far forth lies
 " in our Power) so much as to the Pre-
 " judice of their Reputations, by any
 " Reproach or term of distinction from
 " the rest of our best Subjects, we
 " desiring and ordaining, that hencefor-
 " ward all Notes of Discord, Separation
 " and Difference of Parties be utterly a-
 " bolish'd amongst all our Subjects, whom
 " we invite and conjure to a perfect Uni-
 " on among themselves under our Prote-
 " ction, for the Resettlement of our just
 " Rights, and theirs in a free Parliament;
 " by

“ by which, upon the Word of a King,
“ we will be advis'd.

“ My Lords, if you do not join with
“ me in extinguishing this Fear, which
“ keeps the Hearts of Men awake, and
“ apprehensive of Safety and Security;
“ You keep me from performing my Pro-
“ mise, which if I had not made, I am
“ perswaded neither I nor You had been
“ now here. I pray let us not deceive
“ those, who brought or permitted us to
“ come together. I knew well there
“ were some Men, who could neither
“ forgive themselves, or to be forgiven hope
“ by us, and, I thank you for your Ju-
“ stice towards those, the immediate
“ Murtherers of my Father, and I will deal
“ truly with you, I never thought of except-
“ ing any other. I pray think well upon
“ what I have offered, and the benefit
“ you and I have receiv'd from that Of-
“ fer, and encourage and oblige all other
“ Persons, by not excluding them from the
“ Benefit of this Act. This Mercy and
“ Indulgence is the best way to bring
“ them to a true Repentance, and to
“ make them more severe to themselves,
“ when they find we are not so to them.

" It will make them good Subjects to me,
 " and good Friends and Neighbours to
 " you ; and we have then all our End ;
 " and you shall find this the securest Ex-
 " pedient to prevent future Mischief :
 " therefore I do earnestly desire and con-
 " jure you to depart from all particular
 " Animosities and Revenge, or memo-
 " ry of past Provocations, or that will pass
 " this Act without other Exceptions, than
 " of those who were immediately guilty
 " of that Murther of my Father. My
 " Lords, I have told you my Opinion,
 " and I hope you will be of the same. If
 " any Persons appear of such dangerous
 " and obstinate Principles, that the Peace
 " of the Kingdom cannot be preserved
 " whilst they have Liberty in it : some
 " other Course may be taken, that they
 " shall not be able to do Hurt ; and I
 " assure you, there is nothing can enable
 " them to do so much harm, as the deter-
 " ring the Passing this Act.

" I hope I need say nothing of *Ireland*,
 " and that they alone shall not be with-
 " out the Benefit of my Mercy : they
 " have shewed much Affection to me a-
 " broad, and you will have a Care of

“ Honour, and of what I have pro-
“ promised to them. I do again Conjure
“ you, that you will use all Expedition
“ in the Dispatch of this Bill.

The Preamble to the Act of Pardon
runs thus.

The King's most excellent Majesty taking into his gracious and serious Consideration the long and great Troubles, Discords, and Wars, that have for many Years past been in this Kingdom, and that divers of his Subjects are by occasion thereof, and otherwise, fallen into, and be obnoxious to great Pains and Penalties ; out of a hearty and pious desire to put an End to all Suits and Controversie, that by occasion of the late Distractions have arisen or may arise between all his Subjects, and to the intent, that no Crime whatsoever committed against his Majesty or his Royal Father, shall hereafter rise in Judgment or be brought in Question against any of them, either in their Lives, Liberties or Estates, or to the Prejudice of their Reputations, by any Reproach or terms of Distinction, and to bury all Seeds of future Discords and Remembrance of the

former, as well in his own Breast, as in the Breast of his Subjects one towards another ; and in Performaunce of his Royal and gracious Words, signified by his Letters to the several Houses of Parliament now assembled, and his Declarations on that behalf publish'd, is pleas'd that it may be enacted, and be it enacted by the King's most Excellent Majesty with the Advice and Consent of the Lords and Commons in this present Parliament assembled, &c.

The Reader here may see the Intent and Scope of the said Act was, intirely to quiet the Minds of Men, to allay their Fears, and to bring them if possible to such a State, as tho' they had forgot even that they had been Rebels.

I am sure King *Charles* for his Part seem'd to have forgot, that he was driven into Exile, or who the Persons were that brought down his Misfortunes upon him.

1st, The Act included a General Pardon for all manner of Treasons, Misprisions of Treasons, Murthers, Felonies, Offences, Crimes, Contempts and Misdemeanors whatsoever.

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2dly, Thy were discharged from all Pains of Death, and other Pains, Judgments, Indictments, Convictions, Attainders, Outlawries, Penalties, Escheats and Forfeitures thereof had ; or given, or that might accrue for the same.

3dly, A Discharge from appeals and all personal Actions, Suits, Molestationes and Prosecutions whatsoever ; for or by Reason of any Act of Hostility, Trespass, Assaults, Imprisonment, or Breach of the Peace, &c.

4thly, A Discharge of all Appeals, personal Actions, and Cautes of such Actions, Suits, Molestationes and Prosecutions whatsoever ; by Reason of any Act, by the Authority of the late King, or by Order or Ordinance of Parliaments.

5thly, A Discharge of all Wardships and mean Profits un-receiv'd.

Exceptions in this Act were,
1st, All Murthers not Comprimis'd in the first Clause of the Pardon.

2dly, All Pyraces and Robberies upon the Seas, not done in Relation to the Differences aforesaid.

3dly, The Vice of Buggery.

4thly, All Rapes and Carnal Ravishments of Women.

5thly, Stealing either Maid or Widow against her Will.

6thly, All Offences made Felonies, as relates to Restraint upon Marriages.

7thly, All Offences of Conjurations, Witchcrafts, Sorceries, Inchantments or Charms.

8thly, all Persons now attainted or convicted of the same Offences.

9thly, Excepted the Accounts of all appointed Sequestrators of Church Lands.

10thly, Excepted all Offences in de-claiming the proper Goods of the Kings succinct Stores,

11thly All Issues, Fines and Amerciaments receiv'd by Sheriffs.

12thly, All Jesuits, seminary or Popish Priests, and other disobedient Persons excepted.

13th, Writs of *capias ut legatum* may be directed, but *a scire facias* su'd.

14th, Persons outlaw'd upon a *Capias ad satisfaciendum* Excepted.

15th, Informations and Proceedings concerning High-ways excepted.

16th, The Act not to extend to Obligations or Recognizances not forfeited.

I would have the Reader observe, that suitable Penalties were inflicted upon such as should but reproach his Neighbour with what had pass'd ; so industrious was the King in healing those Divisions.

The Persons excepted by Name were the King's Judges, and those who in Frocks and Vizors did appear upon the Scaffold at *Whitehall*.

But in Regard, Nineteen even of those Persons surrender'd in pursuance of the Proclamation, their Execution was suspended for a time.

Provided, that nothing in the Act should extend to discharge the Lands, Tenements, Goods, Chattles, &c. of Oliver Cromwell, Henry Ireton, John Bradshaw, Thomas Pride, Isaac Ewer, Sir John Danvers, Sir Thomas Maleverer, William Purefoy, John Blastiston, Sir William Constable, Richard Dean, Francis Allen, Peregrine Pelham, John Moor, John Aldred, Humphry Edwards, Sir Gregory Norton, Baronet ; John Ven, Thomas

Thomas Andrew Alderman, deceas'd,
Anthony Stapely, Thomas Horton, John
Fry, Thomas Hammond, Sir John Bour-
chier deceas'd.

I suppose the only Reason why these Men lost their Estates was, because they were dead ; for I am sure, as great Villains were left pardon'd alive, whose Hands were afterwards lifted up to repeat the Blow.

Reflections upon this Act are very obvious ; perhaps more extensive Mercy was never shewn before ; such as would make a Man be apt to think no Person would have suffer'd after that grand Rebellion, if King Charles had not been murther'd.

If the Reader insists, that I should give him some Account of King James's Executions in the West : I assure him the Vindication of that Monarch will speedily come out, in which it will be prov'd, that he was not be blam'd for those Cruelties ; the Spring of all the Villany will be detected, and the Calumny justly fix'd where it ought to be.

After the Revolution, the Royal Scottish Regiment of Horse, and five Hundred of Dumbarton's Regiment deserted
and

and march'd towards *Scotland*. *Ginkle* was sent in pursuit of them, and at a Place call'd *Holland's-Gate* in *Lincolnshire*, came up to them. *Billingsley* was sent to and fro by *Ginkle* to advise them to surrender which at last they agreed to, and were allotted by the Government to a Court Martial to be tried; but *Ginkle* repair'd to his Master, and told him, That those Men had surrendered to Mercy, that his Honour was so far engag'd in the Preservation of their Lives, that if one of those Gentlemen should Perish, he would fling up his Commission: This he urg'd with an uncommon Earnestness and Passion, which prevail'd so far upon the Government, that they thought fit to Pardon them. This Relation I here set down for the benefit of General *Wills*, who was pleas'd not only to acquiesce in the Destruction of those brave Men, who surrendered to his Mercy, but appear'd as an Evidence to take away their Lives.

The next Story which makes a Figure in History, is the Massacre of *Glenco*, which shines in the first Rank of any Relation of that Nature.

the

The Account transmitted to *London* from *Scotland* is thus :

SIR,

Edinburgh April 20. 1692.

THE Account you desired of that strange and surprizing Mal-sacre of *Glenco*, take as follows :
 Mac jan, Macdonald, Laird of *Glenco*, a Branch of the *Mackdonalds* one of the greatest Clans (or Tribes) in the *North of Scotland*, came with the most considerable Men of his Clan to Colonel *Hill*, Governour of *Fort William* at *Inverlochy* some Days before the Expiring of the time for receiving of the Indemnity appointed by Proclamation ; which as I take it, was the First of *January* last ; entreating he would Administer unto him the Oaths, which the foresaid Proclamation requir'd to be taken, that so submittting himself to the Governmen he might have its Protection. The Colonel receiv'd him with all Expressions

" fions of Kindnes, nevertheless they shif-
 " ted the administring the Oaths to him,
 " alledging, that by the Proclamation it
 " did not belong to him, but to the She-
 " riffs, Bayliffs of Regalities, and Magis-
 " rates of Burghs to administer them.
 " *Mac jan* complaining that by ~~that by~~
 " this Disapointment he might be
 " wrong'd, the time being now near the
 " expiring, and the Weather so extream,
 " and the Ways so very bad, that it was
 " not possible for him, so soon to reach
 " any Sheriff; he got from Colonel *Hill*
 " under his Hand his Protection; and
 " withall he was assur'd, that no Orders
 " from the Government against him
 " should be put in execution, until he
 " were first advertis'd, and had time al-
 " low'd him to apply himself to King
 " or Council for his own Safety. But
 " the better to make all sure, (tho' this
 " might have seem'd Security enough
 " at that Time) with all Dispatch ima-
 " ginable he posted to *Inverary*, the chief
 " Town of *Argyleshire*, there he found
 " Sir Collin *Campbell* of *Ardkinliss*, She-
 " riff of that Shire, and crav'd of him
 " the Benefit of the Indemnity accor-
 ding

" ding to the Proclamation, he being
 " willing to perform all the Conditions
 " requir'd. Sir *Collin* at first scrupled to
 " admit him to the Oaths, the time
 " which the Proclamation did appoint,
 " being elaps'd by one Day; alledging it
 " would be of no use to him, then to
 " take them. But *Mac jan* represented
 " that it was not his Fault, he having
 " come in time enough to Colonel *Hill*,
 " not doubting, but he would have ad-
 " ministred the Oaths to him; and that
 " upon his Refusal, he made such Haste
 " to *Inverary*, that he might come in
 " time enough, had not the Extremity
 " of the Weather hinder'd after the time
 " appointed, and that it would be very un-
 " becoming the Goverment, to take
 " Advantage of a Mans coming late but
 " one Day, especially when he had done
 " his utmost to come in time. Upon
 " this and his threatening to protest a-
 " gainst the Sheriff for the Severity of
 " this Usage, he administer'd to him and
 " his Attendants the Oaths, *Mack jan*
 " depending upon the Indemnity gran-
 " ted to those, who should take them,
 " and having so done, he went home and
 " liv'd

" liv'd quietly and peaceably under the
 " Government till the Day of his Death.
 " In Jan. last, a Party of the Earl of
 " Argyle's Regiment came to that Coun-
 " try; The Design of their coming was
 " then suspected to be, to take a Course
 " with those, who should stand out, and
 " not submit and take the Oaths. The
 " Garrison of *Inverlochy* being throng'd,
 " and *Glenco* being commodious for quar-
 " tering, as being near the Garrison; those
 " Soldiers were sent thither to Quarter:
 " They pretended they came to exact Ar-
 " rears of Cels & Hearth-money, (a Tax
 " never known in *Scotland*, until laid on
 " by the Parliament 1690, after the Par-
 " liament of *England* had eas'd them-
 " selves of it,) e're they enter'd *Glenc*,
 " that Laird and his Sons came out to
 " meet them, and ask'd them if they
 " came as Friends or as Enemies; the
 " Officers answer'd as Friends, and gave
 " their Parole of Honour, that they
 " would do neither him nor his Concerns
 " any Harm; upon which he welcom'd
 " them, promising them the best Enter-
 " tainment the Place could afford. This

" he really perform'd, as all the Soldiers
 " confess; he and they liv'd together in
 " mutual Kindness and Friendship Fifteen
 " Days or thereabouts; so far was he
 " from fearing any Hurt from them: And
 " the very last Day of his Life he spent in
 " keeping Company with the Command-
 " er of that Party, Captain *Campbell* of
 " *Glen Lyon*, playing at Cards with him
 " till Six or Seven at Night, and at their
 " parting mutual Protestations of Kindness
 " were renew'd some time, that very
 " Day. But whether before or after their
 " parting I know not, Colonel *Chambell*
 " had these Orders sent him from Major
 " *Duncason*, a Copy whereof I here send
 " you.

SIR,

Ballacholis Feb. 12. 1692.

" **Y**OU are hereby order'd to fall
 " upon the Rebels, the *Macdo-*
 " *nalds* of *Glenco*, and put all to the
 " Sword under 70, you are to have espe-
 " cial Care the old Fox and his Sons do
 " upon

" upon no Account escape your Hands;
 " you are to secure all the Avenues, that
 " no Man escape; this you are to put in
 " Execution at Five a Clock in the Morn-
 " ing precisely, and by that time or very
 " shortly after it, I'll strive to be at you,
 " with a stronger Party; if I do not come
 " to you at Five, you are not to tarry,
 " but to fall on: This is by the King's
 " special Command, for the Good and
 " Safety of the Country, that these Mis-
 " creants may be cut off Root and Branch;
 " see that this be put in Execution with-
 " out Feud or Favours, else you may ex-
 " pect to be treated as not true to the
 " King or Government, nor a Man fit to
 " carry a Commission in the King's Ser-
 " vice, expecting you will not fail in the
 " fulfilling hereof, as you love your self;
 " I subscribe these with my Hand,

Robert Duncason.

For their Majesty's Service to Captain Robert Campbell of Glen-Lion, Duncanson had receiv'd Orders from Lieutenant Colonel Hamilton, which were as follows.

S I R,

Ballacholis Feb. 19 1692.

“ P uruant to the Commander in
 “ Chief and my Colonel's Order to
 “ me, for putting in Execution the Service
 “ commanded against the Rebels in
 “ Glenco ; wherein you with a Party of
 “ the Earl of Argyle's Regiment under
 “ your Command are to be concern'd :
 “ You are therefore forthwith to order
 “ your Affairs, so as that the several Posts
 “ alrerady assign'd you, be by you and
 “ your several Detachments fallen in Act-
 “ ion with, precisely by five a Clock to
 “ morrow Morning being Saturday, at
 “ which time I will endeavour the same,
 “ with those appointed from this Regi-
 “ ment to other Places , it will be most
 “ necessary you secure those Avenues on
 “ the South Side, that the old Fox nor
 “ none of his Cubs get away : The
 “ Orders

“ Orders are that none be spar’d, from
 “ you of the Sword, nor the Govern-
 “ ment troubled with Prisoners. This
 “ is all until I see you from.

your humble Servant.

James Hamilton.

Please to Order Guard to secure the
 Ferry and the Boats there, and the
 Boats must be all on this side the Ferry
 after your Men are over. For their
 Mijesty’s Service, for Major Robert
 Duncanion of the Earl of Argyle’s
 Regiment.

“ T H E Soldiers being dispos’d
 “ five and three in an House ac-
 “ cording to the number of the Family
 “ they were to assassinate, had their Orders
 “ given them secretly. They had been all
 “ receiv’d as Friends by these poor Peo-
 “ ple, who intending no evil themselves,
 “ little suspected that their Guests were
 “ design’d to be their Murtherers. At
 “ five a Clock in the Morning they began

" their bloody Work, surpris'd and
 " butcher'd 38 Persons, who had kind-
 " ly receiv'd them under their Roofs.
 " Mac jan himself was murther'd, and
 " is much bemoan'd ; he was a stately
 " well favour'd **Man**, and of good Cou-
 " rage and Sense ; as also the Laird *An-*
 " *chintrikin*, a Gentleman of more than
 " ordinary Judgment and Understanding,
 " who had Submitted to the Govern-
 " ment, and had Colonel *Hill's* Protec-
 " tion in his Pocket, which he had
 " got three Months before. I cannot
 " without Horror represent, how that
 " a Boy about eight Years of Age was
 " murther'd, be seeing what was done
 " to others in the Houise with him, in a
 " terrible Fright run out of the House,
 " and espying Captain *Campbell*, grasped
 " him about the Legs crying for Mercy,
 " and offer'd to be his Servant all his
 " Lite. I am inform'd Captain *Camp-*
 " *bell* inclin'd to spare him, but one
 " Drummond an Officer, barbarously run
 " his Dagger through him, whereof he
 " died immediately. The Rehearsal
 " of several Particulars and Circum-
 " stances of this Tragical Story, makes

" it

" it appear most dolefull, as that Mac
 " jam was kill'd as he was drawing on
 " his breeches, standing before his Bed,
 " and giving Orders to his Servants for
 " the good Entertainment of those who
 " Murther'd him, while he was spea-
 " king the Words he' was shot through
 " the Head and fell dead in his Lady's
 " Arms ; who through the Grief of this
 " and other bad Usages she met with
 " died the next Day. It is not to be
 " ommitted that most of those poor
 " People were kill'd when they were
 " asleep, and none was allow'd to pray
 " to God for Mercy. Providence or-
 " der'd it so, that that Night was most
 " boisterous, so as a Party of 400 Men
 " who should have come to the other
 " End of the *Glen*, and began the like
 " Work there at the same time (inten-
 " ted that the Poor Inhabitants should
 " be inclos'd and none of them escape)
 " cou'd not march at length, until it
 " was nine a Clock, and this afforded too
 " many an Opportunity of escaping,
 " and none were kill'd, but those in
 " whose Houses Campbell's and *Glen*
 " Lyon's Men were quater'd, othewise
 " all

" all the Males under 70 Years of Age,
 " to the number of 200 had been cut off;
 " for that was the Order, and it might
 " have been easily executed, especially
 " considering that the Inhabitants had
 " no Arms at that time: for upon the
 " first hearing, that the Soldiers were
 " coming to the *Glen*, they had con-
 " vey'd them all out of the way; for
 " though they relied on the Promises
 " which were made them for their safe-
 " ty, yet they thought it not improba-
 " ble they might be disarm'd. I know
 " not whether to impute it to the Diffe-
 " rence of distinguishing a few Years, or
 " to the Fury of the Soldiers, who be-
 " ing glutted with Blood stand at nothing
 " that even some of 70 Years of Age
 " were destroy'd. They set all the
 " Houses on Fire, drove off all the Cat-
 " tle to the Garrison of *Inverlochy*, viz.
 " 900 Cows, 200 Horses, and a great
 " many Sheep and Goats, and there
 " they were divided among the Officers;
 " and how dismal may you imagine the
 " Case of the poor Women and Chil-
 " dren was then; it was lamentable
 " past Expression. Their Husbands and
 " Fa-

" thers and near Relations were forc'd.
 " to flee for their Lives, they themselves
 " were stripp'd and had nothing left them
 " and their Houses being burnt, and not
 " one House nearer than six Miles, and
 " to get thither, they were to pass over
 " Mountains and Wreaths of Snow in a
 " vehement Storm, wherein the greatest
 " part of them perish'd through Hunger
 " and Cold. It fills me with Horror to
 " think of poor strip'd Children and We-
 " men; some with Child, and some giv-
 " ing suck, wrestling against a Storm
 " in Mountains and Heaps of Snow, and
 " at length to be overcome, and give o-
 " ver, and fall down and die miserably.

" You see in *Hamilton's* Order to *Dun-
 canson*, there's a special Caution that
 " none of his Cubs should escape; and
 " in *Duncanson's* Order to Captain *Camp-
 bell of Glen Lyon*, that the old Fox
 " nor none of his Sons should escape:
 " But notwithstanding all this wicked
 " Caution, it pleas'd God that the two
 " young Gentlemen, *Mac jans* Sons es-
 " cap'd; for it happen'd that the young-
 " er of thole Gentlemen trusted little to
 " the fair Promises of *Champbell*, and had

" a more watchful Eye over him than his
 " Father or Brother, who suffer'd them-
 " selves by his reiterated Oaths to be de-
 " luded into a Belief of his Integrity ; he
 " having a strong Impression on his Spirit,
 " that some mischievous Design was hid-
 " den under Campbell's specious preten-
 " ses, it made him after the rest were
 " in Bed, remain in a retired Corner,
 " where he had an advantageous Prospect
 " into their Guards. - About Midnight
 " perceiving several Soldiers to enter it,
 " this encreas'd his Jealousy, so he went
 " and communicated it to his Brother,
 " who could not for a long time be per-
 " suaded there was any bad Design a-
 " gainst them, and asserted, that what
 " he had seen was not a doubling their
 " Guards in order to any ill Design, but
 " that being in a strange Place, and at a
 " distance from the Garrison, they were
 " to send out Centinels far from the
 " Guard, and because of the Extremi-
 " ty of the Weather, reliev'd them often,
 " and that the Men he saw could be no
 " more but these ; yet he persisting to say
 " they were not so secure but that it was
 " fit to acquaint their Father with what
 " he

" had seen, he prevail'd with his Brother
 " to rise and go with him to his Father,
 " who lay in a Room contiguous to that
 " they were in, though what the young-
 " er Son alledg'd, made no great Impres-
 " sion on his Father, yet he allow'd his
 " Sons to try what they could discover ;
 " they well knowing all sculking Places
 " there, went and hid themselves near
 " to a Centinel's Post, where instead of
 " one, they discover'd Eight or Ten
 " Men ; this made them more inquisi-
 " tive, so they crept as near as they
 " could, without being discover'd, so
 " near as they could hear one say to
 " his Fellows, that he lik'd not this
 " Work, and that had he known of
 " it, he would have been very unwilling
 " to have come there but that none
 " except their Commanders knew of
 " it, till within a Quarter of an Hour.
 " The Soldier added, that he was willing
 " to fight against the Men of the Glen,
 " but it was base to murther them :
 " But to this was answer'd, let all the
 " Blame be on such as gave the Order's,
 " we are free, being bound to obey
 " our Officers. Upon hearing of these
 " Words,

" Words, the young Gentlemen retir'd,
 " as quickly and as quietly as they
 " coul'd, towards the Houle, to inform
 " their Father of what they had heard:
 " But as they came nigh to it, they
 " perceiv'd it surrounded, and heard
 " Guns discharg'd, and the People shriek-
 " ing ; wereupon being unarm'd and
 " totally unable to rescue their Father,
 " they preserv'd their own Lives, in
 " hopes yet to serve their King and
 " Country, and see Justice done upon
 " those Hell-hounds, treacherous Mur-
 " therers, the Shame of their Country,
 " and Disgrace of Mankind.

" I must not forget to tell you, that
 " there were two of these Officers, who
 " had given their Parole of Honour to
 " Mac jan, who refus'd to be concern'd
 " in that brutal Tragedy, for which they
 " were sent Prisoners to Glasco, where if
 " they remain not still, I am sure they
 " were some Weeks ago.

" Thus Sir in Obedience to your
 " commands, I have sent such an Ac-
 " count as I could get of that mon-
 " strous and most inhumane Massacre of
 " the Laird of Glenco and others of his
 " Clan;

" Clan; you desire some Proofs of the
 " Truth of the Story, for you say there
 " are many in *England*, who cannot be-
 " lieve such a Thing could be done, and
 " publick Justice not executed upon the
 " Ruffians; for they take it for granted,
 " that no such a Order could be given by
 " the Government, and you say they
 " will never believe it without a down-
 " right Demonstration. Sir, as to the
 " Government, I will not meddle with
 " it, or whether these Officers who mur-
 " ther'd *Glenco*, had such Orders as they
 " pretended from the Government; the
 " Government knows that best, and how
 " to vindicate their own Honour and pu-
 " nish the Murthers, who pretended their
 " Authority, and still stand upon it.

" But as to the matter of Fact of the
 " Murther of *Glenco*, you may depend
 " upon it as certain and undeniable; it
 " would be thought a strange thing in
 " *Scotland* for any Man to doubt of it,
 " as of the Death of my Lord *Dundee*,
 " or with you that the Duke of *Mon-*
 " *mouth* lost his Head: But to put you
 " out of allDoubt, you will e're long
 " have my Lord *Argyle's* Regiment

" with you in *London*, and there you
 " may speak of with *Glen Lyon* himself
 " with *Drummond* and the rest of the
 " Actors in that dismal Tragedy : And
 " on my Life, there is never a one of
 " them will deny it to you : for they
 " know it is notoriouly known over
 " *Scotland* ; and it is an Admiration to
 " us, that there should be any one One
 " in *England*, who makes the least
 " doubt of it. Nay, *Glen Lyon* is so
 " far from denying it, that he brags of
 " it, and justifies the Action publickly.
 " He said in the Royal Coffee-house
 " at *Edinburgh*, that he would do it
 " again ; nay, that he would stab any
 " Man in *Scotland* or in *England*, with-
 " out asking the Cause, if the King gave
 " him Orders, and that it was every
 " good Subjects Duty so to do ; and I
 " am credibly inform'd, that *Glen Lyon*
 " and the rest of them have address'd
 " themselves to the Council for a Re-
 " ward of their good Service, in destroy-
 " ing *Glenco* pursuant to their Orders.

" There is enough of this mornfull
 " Subject ; if what I have said satisfy
 " you not, you may have what farther
 " Proof,

“ Proof, and in what manner you please
“ to ask it, I am. ”

Sir, your humble Servant.

“ Note, The Gentleman to whom
“ this Letter was sent, did on *Thursday*
“ *January 30. 1692.* when the Lord
“ *Argyle's Regiment* was quarter'd at
“ *Brentford* go thither, and had this
“ Story of the Massacre of *Glenco* from
“ the very Men, who were the Actors
“ in it; *Glen Lyon* and *Drummond* were
“ both there; the High-lander, who told
“ him the Story, expressing the Guilt, which
“ was visible in *Glen Lyon* laid, *Glenco*,
“ hangs about *Glen Lyon* Night and
“ Day, and you may see him in his
“ Face.

I shall proceed no farther in this Relation only than to observe (m) Dr. *Kennet's* judicious Reflections upon this Subject, that the Reader may take his Choice

(m) *Kennet's History of England.* Vol. 3. p. 792.

which Side he will be pleas'd to believe.
Dr. Ken et's Relation is thus.

In January 1692, the King sent Instructions to the Commander of his Forces in *Scotland*, touching the High-land Rebels, who did not in due time accept of the Benefits of his Indemnity, which contain'd a Warrant of Mercy to all without Exception, who should offer to take the Oath of Allegiance and come in upon Mercy. Tho' the first Day of *January*, 1693, prefix'd by the Proclamation of Indemnity was past; contrary to his Majesty's Intention, Thirty Eight of the Inhabitants of *Glenco*, a Town in the North of *Scotland* after they had laid down their Arms, were inhumanly butcher'd in their Beds, their Houses plunder'd and their Cattle carried away in *February* 1692 which Piece of Barbarity having given the King's Enemies a seemingly just Occasion of reflecting on his Government, The Committe for Security of the Kingdom made a Motion for enquiring into that matter, thereupon his Majesty's Commissioner aquainted the Parliament, that the King had given Commission to several Persons to make Inquiry

Inquiry into that Affair, which Commission being produc't, read, and agreed to, it was unanimously voted, that the High Commissioners should be desir'd to transmitt their humble Thanks, and the Commissioners made their Report to the Parliament of *Scotland*, who came to these Resolutions.

That his Majesty's Instructions to Sir *Thomas Livingstone* and Colonel *Hill*, contain'd no Warrant for the Execution of the *Glenco Men*, that the said Execution was a Murther, that the Master of *Stairs* did exceed the King's Instructions and that Sir *Thomas Livingstone* had Reason to give the Orders given-

I would have the Reader for his Information observe, that the Time limited by the Indemnity expir'd *Jan. 1st, 1692.* *Jan. 11.*, Orders were sent to Sir *Thomas Livingstone*, and Colonel *Hill*; and on *Jan. 16.* these following Instructions sign'd *W. R.* at the bottom, and on the Top.

W. R.

As for *Mac jan of Glenco* and that Tribe, if they can be well distinguish'd

from the rest of the Highlanders, it will be proper for the Vindication of publick Justice to extirpate that Set of Thieves.

William R.

Hamilton had his Order from *Levingstone* and *Hill*, *Duncanson* from *Hamilton*, and *Glen Lyon* from *Duncanson*, by whom the Butchery was perform'd.

The Reader is to understand, the Parliament of *Scotland* voted the above-said Orders sign'd *W. R.* not to contain a Warrant for the Execution of the *Glenco* Men, and that *Levingstone*, who acted in Pursuance of those Orders, could not be to blame.

So that the Murther fell upon *Hamilton*, who it is suppos'd, might have extirpated the *Glenco* Men without destroying them. *Hamilton*, was voted guilty of the Murther, order'd to be apprehended, and an Address sent to have both him and the other Actors prosecuted or not, as his Majesty should think fit, and so the Matter fell.

'Tis not my Business to determine on either Side : I have left the Matter to the Reader's Judgment, to judge thereof as he thinks fit; however I can assure him, none lost their Posts, as being suppos'd only to put a wrong Interpretation upon the Word *Extirpate*, they poor Men could not distinguish between the Letter and Spirit of the Warrant.

I shall leave this melancholy Subject, and repair to King *James* in *Ireland* : Examine how he behav'd himself to his Enemies, whether he entertain'd any Sentiments of Extirpation in *Hamilton*'s Sence.

The Garrison of *Londonderry* had perhaps given him as much Provocation as was possible ; and General *Rosen* a Foreigner, issu'd out a very severe Proclamation, in which he threaten'd to put all to the Sword who would not Surrender. Which being represented to King *James*, he return'd this mild and rational Answer :

That he had heard of the Order before, and that he had Orders to stop it : That General Roien was a Foreigner, and us'd to such Proceedings as were strange to

to us, tho' common in other Places ; and that if he had been his own Subject, he would have call'd him to an Account for it.

Such were the Unfortunate King's Sentiments of putting Garrisons to the Sword ; nor was any thing of that Nature done during all that War in cold Blood. All was ended in a fair candid Manner by the Surrender of *Limerick* in which Colonel *Oxborough*, poor unhappy Gentleman, found more Benefit than by that of *Preston*.

I could carry the Reader on to the History of the Surrender at *Preston*, but for want of some necessary Materials, I must beg his Pardon. I have not as yet receiv'd an exact Account what is become of those unfortunate Wretches ; how many were hang'd at *Lancashire* and at *Tyburn*, how many are still in the Prisons of *Leverpool* and *Chester* ; and in *Newgate*, the *Fleet*, and the *Marshalsea* here. Till I have got these Accounts faithfully transmitted, 'tis to no Purpose to write a History of that Nature.

Thus have I finish'd the Historical Part of this relation as far as regards *England*

England, I shall shut up that Story with a Point of Law, which I shall submit to better Judgements than my own.

An Act pass'd in the 11th of H. VII. that no Person that should attend upon the King for the time being, and do him true and faithful Service of Allegiance in the same, for the said Duty and true Allegiance should be attainted or convicted of High Treason, nor of other Offences for that Cause.

The Scope of this Act I take to be, That no Persons should suffer for their Loyalty.

The manner in which this End was to be answer'd was in providing that no Person serving the King, for the time should be punish'd; for then, tho' the Title should be disputable, the Loyal Subject could not suffer.

Perhaps some will object, That this Act, granting such an Interpretation to be good, goes too far, because it secures as well the Enemies to the King *De Jure*, as his Friends.

I Answer, That it secures only those whom it ought to secure, that is those, who

who attended the King in the ordinary Military way ; but not those who fell from their Allegiance (as the Act expressly says) *i. e.* not those who had the chief Hand in the Treason.

To conclude, The Instruments should not suffer, but the Prime Agents should.

This Act therefore was primarily calculated for the Benefit of Loyal Men, that in Case of an Usurpation they should not be hang'd for fighting in Defence of their King.

It was secondarily intended that in Case of Usurpations, the poor Instruments, who follow'd the King for the time being, should not be cut off by the Halter or by the Sword.

The Reason, Spirit, and Intent of this A&T, I take to be Law, without a slavish Adherence to the Letter thereof.

Therefore in a Civil War, where perhaps neither, or but one of the contending Persons for a Crown, has got such a full Possession as to be call'd a King ; nevertheless either of them, so far as their Arms extend, may be term'd the Power *de Facto* in that Place, and such a Power

de

de Facto comes within the Cognisance of this Act.

There is no doubt, but this agrees with the Reason and Scope of the Act, which was to protect Loyal or Unfortunate Men in any Usurpation, of what Nature soever it was.

To apply what has been here laid; as the Chevalier *de St. George* was in Possession of the greatest part of *Scotland*, of some part of *England*, Quere, Whether a common Soldier, taken at *Preston*, coming from *Scotland* with his Laird, might not have pleaded the Benefit of that Act.

But if we grant Dr. *Higden's* Scheme to prevail, that Possession gives an absolute and compleat Right (which Scheme in my Opinion is the most abominable one that ever prevail'd) 'Tis evident in such a Case, those that serv'd the Chevalier, could be liable to no Pains of Treason, in serving him at *Preston*, and much less at *Perth*.

I only submit the Sense of this Act to the Judgment of the Lord Chief Justice *Parker*, or any Judge upon the Bench, without determining any thing my self upon the Dispte.

Neither

Neither do I design it as a Reflection upon the Government, because nice Points of Law may sometimes escape the Notice of the wisest Men; but I must needs say, if it had been my Fate to be a Rebel, and tried at *Westminster* for the same, when I was upon my last Legs, I should have insisted upon that *Act*.

'Tis almost Time to draw toward a Conclusion, and leave to the Impartial Reader, what Judgment he ought to make from what has been said. I am very confident, that not only our *English*, but other prophane Histories will furnish Precedents of this Nature. Sacred History also will come into our Assistance: I would ask whether one Man besides *Ab-solom*, perish'd in that unnatural Rebellion, which was rais'd to depose a Father; and even his end was attended with his Father's Tears, and the Pangs and Throws of natural Affection; tho' to have spar'd such a Rebel, would I confess have been impolitick in the Highest Degree.

Sheba the Son of *Bichri*'s Head expiated general Revolt of the Ten Tribes; there

there were no publick Executions, no bribing Evidences, nor *Levites* prompted to disgrace their Order by informing and Treachery.

I deliver it as my Opinion, that Men with their Swords in their Hands may justly claim the Law of Arms ; and I believe Testimonies will croud in upon me, to prove this Matter beyond Possibility of Answer.

The Law of Arms is no more than a Branch of the Law of Nations, which I define to be an Agreement made between Nations for their mutual Convenience, confirm'd by the successive Approbation of Custom from the Beginning of the World, or at least since Independent Nations have been,

Municipal Laws have the same regard to a particular Society, but their Obligation is different, because they have the Sanction of the supreme Power ; and the Law of Nations is only founded upon Consent, and the Laws of Justice in general abstracted from positive Laws.

A Prince who breaks the Laws of Nations, cuts himself off from the Benefit

of Entercourse with his Neighbours, and the mutual Conveniences, such Laws procure.

A Subject who breaks into the Municipal Laws of his Country in such a Manner, as willfully to oppose himself to their Authority, becomes from that time guilty of Rebellion, and forfeits the Advantages of Society, and is for that Fact cut off from the same. (n)

Cujacius therefore admirably well observes, that thole natural Rights, which by the Laws of Nations are strictly inforc'd, are constituted by Divine Providence, and are consequently firm and immutable, whereas the Civil Laws of a Country may be chang'd by the Legislative Power therein.

A Breach of the Law of Nations may be punish'd by an Independant

(n) Sic naturalia quædam jura quæ apud omnes gentes per seque fervantur, Divina quædam Providentia, constituta semper firma argue immutabilitia permanent. Ea vero quæ ipsa sibi quæque Civitas constituit sæpe mutari solent, vel tacito consensu Populi, vel alia postea Lege lata Cujacius Tom. Lib. i. p. 4.

Prince, because he is injur'd, and as
 (o) *Gregorius Tholofanus* says such Laws
 are *Bella Legitima à iure Gentium inducta*,
 Indeed the Law of Nations allows a Law-
 full War. But the Law of Nations does not
 allow an unjust War ; yet as one Party
 must be the Aggressor, both the just and
 unjust have a Claim to the Law of
 Arms.

A Breach of the Municipal Laws of a
 Country is punish'd by the civil Magis-
 trate, because he is injur'd ; yet both the
 Sovereign and the Subject shall have the
 Benefit of the Municipal Laws of the
 Country, either in condemning or acquit-
 ting the supos'd Criminal.

Thus far the Parallel will hold, and I
 may draw this Conclusion, that the Just-
 ice or injustice of a War does not affect
 the contending Parties in their Pretensions
 to the Law of Arms.

Therefore those Persons who would urge,
 that Rebels have no Right to the Law
 of Arms ; because they have no Right

(o) *Gregorius Tholofanus*. lib. 19. c. 2.

to rise in Rebellion, are drove from that Refuge.

I urge therefore, that the same Reasons hold, why Subjects should have the Law of Arms as well as Independant States ; the Agreement is founded upon the Eternal Laws of Justice, and it is the same with Subjects.

The Law of Arms is founded upon the Publick Good, and the Common Convenience, of Mankind, that the Sword may not perform more Executions than are necessary for attaining the Ends, for which Arms are assum'd, which is always suppos'd to be the defending or acquiring some Rights ; one of those Pretences are common even to the most Ambitious Monarchs in the Universe.

Common Modesty will not let them declare openly to the World, that they are the first Aggressors only for the Sake of Empire, or a Thirst after Destruction.

If therefore a Rebellion arises in a Country : the Prince suppresses it with a View, that it should not be able to disturb the Peace of the Kingdom again.

When any Independant Prince is assaulted by his Neighbour, he defends himself

self with this Prospect, that he may disarm his Enemy, so far as to prevent his putting him upon another Hazard again.

When he has got these Ends, he would be Brutish in executing his Prisoners, and shedding Blood unnecessarily upon the Ground.

If a Prince therefore, to satisfy the Passion of Revenge, puts to Death Numbers of his Subjects, who have been unfortunately led into Rebellion; he commences a Destroyer of his People, for as (p) *Arumæus* says, *non sua sed publica vota moveant, & subditorum non sua respiciant Commoda.* They are not to sacrifice the Lives and Liberties of their Subjects to their Passions.

I lay down therefore as a Maxim, that no more Blood ought to be shed in any War, than answers the End for which Arms were first assum'd.

This therefore holds good in Civil as in Foreign Wars, because the Utility, Convenience and Justice is equal in both

at least, if the Scale does not turn on the side of the Subject ; because I look upon the Blood of such an one to be more precious than that of a more foreign Enemy.

Moreover, this is founded upon the Law of Eternal Reason ; 'tis Antecedent to the positive Laws of any Country whatsoever ; for tho' there really is no point of time between the Creation of Man, and the Institution of positive Laws ; Yet the Law of nature existed before the Creation, and is previous to any human Institution. The Laws therefore of a particular Country cannot over-
rule the Law of Nature and the Law of Nations : If I had therefore surrendered with my Sword in my Hand, and had been tried afterwards in any Common Court of Judicature, I should have so far demur'd to the Jurisdiction of the Court, as to have insisted upon the Common Rights of Mankind ; I say I would have so done, if I had not been us'd fairly according to my Agreement at my Surrender.

An Instance of this clashing between the Common Law of *England*, and the Law of Nations, was evidently shewn, when

when the Czar of Muscovy's Ambassador was arrested here for Debt; no positive Laws of our Country could discharge the said Ambassador; nevertheless, by the Law of Nations he cou'd not be detain'd.

I protest, I cannot see what Jurisdiction Common Courts can have over a Prisoner of War, if any compact preceeds.

Perhaps some will object, that my Argument proves to much, viz, that Subjects cannot be put to Death for Rebellion.

I protest this is farthest from my Thoughts. If a Rebel is taken in Arms he may be hang'd; for this we have the Authority of not only our Municipal Laws, but of the Law of God, who when he instituded Government put the Power of Life and Death into the Hands of the Sovereign: But the Question remains in what manner he is taken; I insist upon it, that he ~~has~~ has a Right to all the Capitulations of Men in Arms; if he Surrenders to Mercy, he is to have Mercy, or whatever besides he capitulates to have. But if he is taken without any Capitulation of that

Nature

Nature the Prince is left to his full Liberty to act as he pleases.

A Trumpeter sent by a Rebel cannot be put to Death, nor in my Opinion can an Hostage regularly be so serv'd, whatever by Mistake was the Fate of my Lord *Derwentwater*, and Colonel *Oxborough*. (q)

Zouch in his *Elementa juris=Prudentia*, has very well distinguish'd the two Bases, upon which the Law of Nations is built, viz. Reason and Custom; Reason finds out what is usefull to Mankind by a Train of Consequences; and Custom confirms all those Deductions by Experiments, and Matters of Fact.

If therefore I can prove the Law of Arms to belong to Subjects from these two Heads, I think it sufficient for my Purpose.

I urg'd before, that the Reason and Justice of granting the Law of Arms to Independant Nations, prov'd also that the same was due to Subjects. How-

(q) *Zouch Element. juris prudent. p. 114.*

ever I think we may reduce the Reasons to their proper Heads.

First, That no Blood may be unnecessarily shed.

Secondly, That the Means of Reconciliation may not be entirely cut off.

Thirdly, That some Security, Ease, and Comfort, may be procur'd to the Friends of each contending Party in Distress.

Fourthly, That Compositions may be made for Towns, Castles, Fortresses, and the like, for the mutual Benefit and Safety of each other.

I insist therefore, that these Reasons hold much more strongly in Civil Wars.

For *First*, If no Quarter is given, even by our Countrymen, and the Son is oblig'd to sheath his Sword in his Fathers Bowels, if he meets him in the Field ; such Scenes of horror I wish may be banish'd from my native Country to the Banks of the *Elbe*, the *Boristhenes*, or any Place where I was never Born. I may be bold to say, that if all Prisoners taken in Civil War shall be formally

con-

condem'd and hang'd for High Treason, we should have Carrion enotigh for all the Crows in Christendom to feed upon.

If we suppose King *Charles II.* to have try'd and executed by rigour of Law, all those who had been guilty of High Treason against either himself or his Father, he would not have had Lords enough left to make a Privy Council; Commoners enough to fill a Senate; nor Judges to sit upon a Bench, and administer common Justice to the People.

Those therefore; who distinguish themselves with so much Fury against some People taken at *Preston*, and pronounce an indiscriminative Sentence of hanging them all, should consider, that it would be a great Chance if they would not have imbru'd their Hands in the Blood of their dearest Friends and nearest Relations, if they had put that Sentence in Execution: And I may venture to say, their abhorrence of Rebellion is of a very late standing, and not two Minutes older than the late Reign. I remember the time when they wou'd have been glad to be in the same

same Circumstances those Gentlemen were in before they were taken, tho' upon a different Account.

As to the Second, I wou'd ask these warm Sparks how the Surrendry of *Preston* cou'd have been brought to bear, if the Messenger, who went out from the Town, had been treated as an Enemy. Did not *Wills* condescend to some Usages of War towards them? Surely when a Nation is engag'd in a Civil War, such Intercourse should not be cut off, as would heal the gaping Wounds, and disperse the Miseries of our Country. There cou'd be no possibility of accommodation, till one Party had compleatly devour'd the other, and this is what some Triumphant Gentlemen would fain be at.

As to the *Third* and *Fourth*; how should Prisoners be exchang'd; Towns, deliver'd up before a Storm; if the Law of Arms is cast behind. The Consequences of which be, that we should have continual Examples of *Drogheda* before our Eyes. (x)

(2) When Oliver Cromwell put a whole Town to the sword.

Thus far I hope we have got Reason on our Side, and if we appeal to Experience, I am pretty sure we cannot well be cast.

I have given a great many Presidents out of *English History*, but least that should not not have Antiquity enough to back it, I could carry the Reader from the Building of *Rome*, to the Destruction of that flourishing Empire. The Anti-ents had a strong Notion of Faith to be kept with Rebels, and *Grotius* gives an instance of the *Lacedemonians*, who were suppos'd to have been pursued by Divine Vengeance for violating their Faith given to their Rebel Slaves. (s) *Gretius* gives his Reasons why Subjects have a right to the Law of Arms, for says he, if we grant that the Supream Power of the Prince extends to deprive Subjects of the Law of Arms, it makes void all Agreements of that Nature, and puts the War

(s) *Id enim jus si ad omnes spectat Res subditorum quid ni etiam ad jus ex promisso Bellico natum: Quod si conceditur videnter inanes fore omnes tales pactiones ac proinde Belli nisi per victoriam fuijendi spes nulla Grot. de jure belli et pacis lib. 3. c. 19. p.7. upon*

upon the dismal Issue of having no End without a determining Victory. (t)

Puffendorf intirely agrees with *Grotius*, but has more fully explain'd the Matter; he says, that if Rebel Subjects are reduc'd by mere Force, they lie at the Mercy of the Prince; which is no more than what I acknowledged before; but, says he, if any Compact or Agreement precedes, this amounts to a Pardon, and takes away all Pretence of cutting them off for their Treason; they are from that time reunited to the Body from which they have been cut off.

Thus have I got the Opinion of *Grotius* and *Puffendorf* on our side, Men famous in their Generations for their Learning and Knowledge in Matters of this Nature, and I think we have Instances enough in History to support their Assertions.

I would ask any impartial Person, whether when a Prince treats with his

(s) —*Sed si per pacta res componatur ipsa negotii natura ostendit Regem rebellibus delicti gratiam facere sic ut obtentu Rebellionis pacta nequeant irrita reddi Puffend.* De Jur. Naturae Lib. 8. c. 8. S. 2.

arm'd Enemies in a Martial Way, it is not suppos'd, that he deals with them upon Martial Terms. If indeed he imitates those Gentlemen who oppos'd only the Rebellion of their Slaves with Whips, he then may be left to his Discretion what he will do with them when they come under his Power; but the Case is widely different when Men have their Swords in their Hands. The Sword always calls for the Law of Arms, and expects it on whatsoever Side it happens to be.

If a Prince moreover uses his Subject in such a Manner, they have double Reason to expect it; his previous Actions are a Declaration of his future Conduct For surely 'tis very hard, that a Prince should treat with the Rebels in a Martial Way till he has got them into a Snare; and then cut them off by the Municipal Laws of the Country; this is making the Martial Law serve only on one Side.

But when we read of a Garrisons surrendering at Discretion, we suppose them upon the same Terms with a Garrison in *Flanders*: and there is not a Serjeant in

in the Army but knows the Custom of those Countries in that Respect.

Would not the Emperor in *Hungary* have made fine Sport, if he had hang'd all the Rebel *Hungarians* he took in the Towns or in the Field ? or what pure Havock *Philip* and *Charles* in their turns might have made in *Catalonia* and *Valencia*.

To give the Reader an Idea of the Emperors Conduct, I shall give him a short Journal of the *Hungarian* Rebellion, taken from our Gazetts from its Rise to its farther Progress, as far as relates to Submission, Surrendry, and the like.

Gazette Nov. 1. 1703. Letters from *Presburg* on the 24th say, That the Count *de Schlick* was still in the Neighbourhood of that Place, but in a Day or two would begin his March towards the Rebels in order to drive them out of *Levintz*. Several Parties of them have submitted and are come over to him with their Standards upon the approach of the *German* regular Forces.

Nov. 11. Gives an account that *Schlick* had attack'd *Levintz*, and in the Storm

had cut off most of the Garrison, and took 500 Prisoners.

April. 13. 1705. We hear than Count *Nadasj* who was appointed by the Emperor, to go into the several Countries of *Hungary* with offers of Pardon has already succeeded in the five chief Counties on this side the *Danube*, viz, *Soproniensis* or *Odenburgh*, &c. all which have accepted the Emperors gracious Offer, and are return'd to their Allegiance. The City of *Guntz* has likewise submitted and receiv'd an Imperial Garrison.

April 17. The Party of the *Rebels* in *Hungary*, is very much weaken'd by the return of most of the Provinces of the lower *Hungary*, which are situated on the Side the *Danube* to their Duty and Allegiance. Yesterday four Officers arriv'd here from *Croatia*, with the welcome News that Lieutenant General *Heister*, having pass'd the *Drave* with a Detachment of 2000 Imperialists, several Thousands of the Rebels who were posted on those Frontiers under the Count *Nadasj*, had by his Perswasion, laid down theer Arms and submitted to the Lieutenant General, on Promise

of

of the Emperor's Pardon and Protection. They have also surrend'red three strong Castles, &c. On Field Marshal General *Heisters* approach towards *Rapa*, with the main Body of the Imperial Forces, the Magistrates sent out Depuries to acquaint him, that they were ready to submit to the Emperor.

May 4. He had made Choice out of the Malecontents who lately submitted to Lieutenant General *Heister*, on the Frontiers of *Croatia*, such as were best able to bear Arms, whom he had form'd into Three Regiments for the Emperor's Service.

June 19. By our last Advices from General *Heister's* Army, he had caus'd the Towns of *Vesprin* and *Papa* to be burnt, by way of Punishment to the Inhabitants thereof; who after having submitted to the Emperor, were fallen off again to the Malecontents.

Sept. 25. His Imperial Majesty has granted a Cessation of Arms to the Malecontents in *Hungary* till the last of this Month, and Couriers were dispatch'd the 13th Instant to the several Generals and Officers in that Kingdom,

to forbear all farther Hostilities. We have since receiv'd Letters of the 14th from *Berezeni*, with an Account of his accepting the Amnesty, and 'tis not doubted but we shall quickly have the same News from *Ragotzki*.

Jan. 15. The Inhabitants of the great Island of *Schut*, and of the largest Part of the Country of *Neitra* are return'd to their Allegiance, and have sent to *Gen-Heister* to beg his Protection.

May 28. 1705. The Emperor has order'd Cardinal *Colonitz*, the Palatine *Esterhasi*, and Count *Palfi*, to signify to the Clergy, and to the several Counties under his Government, as also to the two Deputies of the *Hungarian Malecontents*; how desirous he is to put an End to the Troubles in *Hungary*, by redressing former Grievances, and observing for the future, all the Conditions of his Coronation Oath.

June 7. Since that time they will have receiv'd Notice of the last Emperor's Death, and of his present Imperial Majesty's gracious Disposition towards redressing their Grievances, which favoura-

ble Conjunction it is hop'd they will improve by returning to their Allegiance.

June 7. On the 22d Instant, the Baron de Szirmai's Secretary arriv'd here from Hungary, with Proposals about the Exchange of Prisoners.

July 5. This Morning Baron de Szirmai's Secretary was dispatch'd with necessary Instructions for the Exchange of Prisoners, and within two or three Days the Deputies *Visa* and *Occulluciani* will be sent away with new Proposals of Peace.

Sept. 17. We are expecting with some Impatience from the Hungarian Deputies who lately return'd from hence to the Malecontents ; an Account of their Dispositions towards an Accommodation.

Jan. 10. General Goclesburgh with a Detachment of Imperialists possess'd himself soon after of *Samos* *Yvar*, and General *Viermout* with another Detachment took the Castle of *Giula* the malecontents that were in Garrison in both these Places, having surrender'd to Discretion.

Feb. 7. But it is to be hop'd, that the posture of their Affairs on one Hand. and

and on the other his Imperial Majesty's Clemency, and the Declaration which is to be sent them from hence by Count *Rechteren* will encline them to take such Resolutions in their Assembly at *Miskotz*, as may put an end to those unhappy Troubles, and Restore the peace and Tranquility of Their Country.

Feb. 14. We are in great Expectation of what Resolutions the Malecontents in *Hungary* will take in their Assembly at *Miskotz*, which from the Posture of their Affairs, and the Emperors gracious Disposition towards them, we have Reason to hope will be such, as may contribute towards putting a Final End to those Troubles.

March 28. 1706. Count *Rechteren* Envoy Extraordinary from the States General went from hence the 11th instant for *Ternau*, with very favourable Proposals from this Court for a Cessation of Arms desir'd by the Malecontents, and we are expecting their Resolutions thereupon.

Feb. 24. Several Counties of *Hungary* which lie on this *Danube*, have since the Junction of the two Bodies of Imperial Troops

Troops commanded by the Generals *Staremberg* and *Rabutin*, quitted that Princes Interest, and submitted to the Emperor.

Sept. 9. 1708. The Hungarian Garrison that was at *Neytra* has been conducted to *Newhausell*. — General *Oskai* one of the Leaders of the Malecontents has submitted himself and whole Regiment to the Emperor; Count *Palfi* Ban of *Croatia* having procur'd him the Emperors Pardon. — Our Advices from *Presburg* tells us, that *Anthony Esterhafi* and *Berezeni* two other Hungarian Leaders are now actually treating with the Imperial Generals, on Terms from themselves, and the Troops under their Command, and that the conditions of the of the Treaty are in a Manner settled, they being assur'd of the Emperors Pardon and of being constantly Employ'd in the Imperial Army. Some Advices say that General *Heister* is march'd to *Papa*, to assure those Hungarian Generals of a Punctual Performance of the Conditions stipulated by them, and receive them and their Troops into the Emperor's Service.

Feb. 10. Two Troops of the Hungarian Cavalry join'd the Imperialists in those Mountains and threw themselves upon the Emperor's Mercy.

Feb. 28. *Paul Okoluczani*, who was formerly employ'd by the Malecontents to solicit their Peace at this Court, but was afterwards upon Suspicion, cast into Prison by them, and reported to be dead, is come hither within these few Days to emplore the Emperor's Mercy.

Mar. 20. Upon Advice, that the Hungarians, had again taken Possession of the Pass of Schickwar, the Governor of *Alba Regalis*, march'd thither with a Detachment of Five Hundred and Eighty Men, and oblig'd the Enemy after a warm Dispute to capitulate: The Garrison consisted of Two Hundred and Seventy Men, but was allow'd no other Marks of Honour, than that of marching out under Arms.

July 7 1709. The Emperor does not think fit to revoke in general all the Forfeitures that have already past; but promises Redress to such particular Persons as shall shew themselves to be injur'd. He thinks it reasonable, that Children should

should suffer in their Estates by the Forfeiture of their Parents for the Crime of High Treason, but declares that the Innocent Brother or Wife of the Criminal shall not be involv'd in the Forfeiture.

— Seeing that Prince *Ragotzki* and his Adherents have hitherto pertinaciously refus'd to accept of the Offers of Mercy and Pardon, that have been made them, there remains no other way for putting an End to the present Troubles, but to declare all and every one of those that have taken up Arms, if they do not return to their Allegiance within a Months time, Traitors and Enemies to their Country, and all their Goods to be forfeited to the King's Exchequer.

July 16. Soon after this Action he publish'd a Proclamation, declaring that they who would accept of the Terms of Pardon granted by his Imperial Majesty, should be receiv'd into his Protection. But that they who continu'd obstinate must expect to be treated with the utmost Rigour and Severity.

Aug. 4. We have received Advice that Twenty Four Villages of the Malecontents have lately submitted themselves to his

his Imperial Majesty, and that they have plunder'd the Country and destroy'd Habitations of those who continue in the Interest of Prince *Ragotzki*. Count *Hannibal Heister* is set at Liberty, after having been Three Years a Prisoner of the Malecontents; at the same time, several of their Principal Officers who were the Emperors Prisoners obtain'd their Enlargement. — The Act for the Confiscation of the Estates of such *Hungarians* as shall continue in Arms, is sent back hither in Order to receive some Concessions from the Emperor in Favour of the Malecontents.

Nov. 24. The Emperor hath lately taken into farther Consideration the Affairs of *Hungary* with Relation to the confiscated Estates of the Malecontents, and hath given farther Conditions, and a longer time to those who shall return to his Obedience, before the Laws are put in Execution against them. The Conduct of this Affair is recommended to the Cardinal of *Sax Seitz* Primate of *Hungary*, and that Prelate is lately set out for *Presburg*, in Order to publish these his Majesty's gracious Intentions, as the

the last Instances of his Favour, in case they shall reject his present Offers.

After this in *December*, the Emperor publish'd a Proclamation with fresh Offers of Pardon to all who in one Months Time should return to their Allegiance.

This is sufficient to give the Reader a View of the Conduct of a Natural Prince to his own Subjects; and I defy any Man to produce an Account of the Execution of one *Hungarian* Rebel in cold Blood during all that War.

I might proceed to other Journals to prove my Argument from matters of Fact: But to prevent nauseating the Reader, I shall conclude:

Claudite jam Rivos Sat prata biberunt.



the **first** **ground** **of** **peculiar** **importance** **is** **the** **one** **in** **which** **the** **two** **extreme** **points** **of** **the** **circle** **are** **joined** **by** **a** **line** **perpendicular** **to** **the** **axis** **of** **rotation** **and** **the** **two** **extreme** **points** **of** **the** **axis** **are** **joined** **by** **a** **line** **perpendicular** **to** **the** **circle**.





APPENDIX.

Numb. I.

Edward by the Grace of God King
of England, Lord of Ireland, and
Duke of Acquitain, to all his
Bailliffs and Feodals to whom these
Presents shall come Greeting.

KNOW ye, that whereas in this
our present Parliament, began at
Westminster Three Weeks after the Nativi-
ty of St. John the Baptist; by Us, and the
Prelates, Earls, Barons and Commons of
our Kingdom there, by our Command as-
sembled

sembled, it was agreed. That no Person, of what Estate or Condition soever, for any Alliance at any time, by Oath, Writing, or in any other Manner made, or for the takin^o. occupying or detaining of any **Castles, Towns, Mannors, Lands, Tenements**, Goods or Chattels, or for the taking imprisoning, or ransoming any of the People of our Allegiance, or for other Murthes, Robberies, Felonies or other Things, which may be deemed as Trespasses or Fellowies done against our Peace by several Great Men of our Kingdom, their Allies, and adherents, in the Pursuit which they lately made against Sir *Hugh Spencer* the Son, and Sir *Hugh Spencer* the Father, from the first Day of *March* last past, to the *Wednesday* next after the *Feast of the Assumption* of our Lady; that is to say the 19th Day of *August* next ensaing; shall be neither summon'd, nor Challenged, apprehended, imprison'd, hinder'd, molested or griev'd, neither in Judgment brought by us, nor by any other at our Suit, nor at the Suit of any other, whosoever he be, either in our Court, or in any other Place; but they shall be acquitted of for all such Trespasses and Fellowies by this Agreement and Assent, except always the said *Hughs*, by for Prisals, have just Cause to recover their Castles, Towns, Mannors, Lands, Guardes, and Marriages, according to the Laws and Customs for-

formerly in force, without any Punishment from us, or Detriment to retrieve the aforesaid lost Time, as is express'd more at large in the aforesaid Agreement and Assent.

Our Will and Pleasure is, that this Agreement be faithfully kept in every Respect. And that our Loyal and Faithfull Subject *H. de B. Earl of Hereford and Essex*, one of the said Great Ones by Allegiance, for any time whatsoever, for Oath, Writing, or after any other respective Manner, or for any thing done in that foresaid Suit within that said time shall not be arraigned, challenged, apprehended, imprisoned, hindred, molested, nor aggrieved, nor adjudged by us, nor by any other, at our Suit culpable, nor at the Suit of any other that shall be impleaded in our Court or elsewhere against that Tenure of the foresaid Agreement.

See *Rymer's Fœdera.* Vol. 3. p. 891. *A. E.*
2. 15. *A. 1321.*

Numb. 2.

The Bishop of Carlisle's Pardon from all Treasons

*The King to all Sheriff's and faithful
Subjects Greeting,*

Now ye, that *Thomas Merk*, late Bishop of *Carlisle*, was indicted for ~~that~~, that he and many more condemn'd to die, falsely, wickedly, and treacherously conspiring, contrary to their Allegiance, by all the Ways and Means could be thought of, how to destroy and murder us and bring our Enemies of *France* to inhabit the Kingdom of *England*, among them, at *London*, viz. at *St. Paul's Church* in the Ward of *Baynards Castle*, and at the little Parish of all *Saints* in *Douglas's Ward*, and divers other Places within the aforesaid City and elsewhere in the Kingdom of *England* from the Feast of *St. Nicholas* last past until the Feast of the Circumcition of our Lord then next following, and a long time before and after, at different times wickedly and treacherously imagin'd and contriv'd, and were

were Principal and Capital Leaders Controvers and Procurers and consulting, assisting, and consenting with *Thomas Blount, Kt.* and *Benjamin Cely Kt.* and very many other Traytors of our Kingdom of *England*, lately convicted before us at *Oxford* for the aforesaid Treasons, and according to our *English* Laws condemn'd to die; and furthermore, that they with the aforesaid, and very many other Traytors of our Kingdom of *England*, falsly, wickedly, and treacherously, contrary to their Allegiance, binding one another, and adhering to our Adversary and Enemy of *France*, to introduce into our Land of *England* our Enemy, to the intent that We, our Nobles, and all our faithful Subjects should be destroyed, and our Enemies of *France* again inhabit our Kingdom of *England*, on *Tuesday* the Feast of the Epiphany of our Lord last past at *Brampton* in the County of *Oxford*, *Wanting*, *Jarendon* and *Circester*, and divers other Places within the Kingdom of *England*, being arm'd, and appearing in a warlike Manner, as in the Land of War, with Colours display'd, villainously and treacherously made an Insurrection, and marched about, had laid in wait at *Windfor*, and other ~~black~~ Places, on *Monday* the Vigil of the Epiphany of our Lord, treasonably to kill and murther us, and took with them and imprison'd divers of our faithful

ful Liege Subjects as Prisoners in the Land of War. And compell'd to go with them viz. *Walter Hungerford, Kt.* and divers others of our faithful Liege Subjects, who would by no means consent to the aforesaid Treasons; and feloniously plundered them of divers Goods and Cattle to the value of Two Hundred Pounds, and wounded very many, and kill'd some; and furthermore assaym'd the Kingly Power without our Authority or Warrant publickly at *Wanting* and divers other Places in the Kingdom of *England*, were they rode about and made Proclamation, That all Men shoul take up Arms for their King, and their Liege Lord *Richard late King of England*, (who before, for his Male-administration thro' the whole Course of his Reign, was deservedly Depos'd from the Government of the aforesaid Kingdom); and that same late King, did of his own accord voluntarily and absolutely renounce and resign for ever the Crown and Dignity of the Kingdom of *England*) and moreover so that they publickly saying and proclaiming, that they would not that we should be their Lord and King, nor would they in any wise suffer us to Reign over them, they issuin'd out their Orders to all Men that they should forthwith be ready to ride about with them and commit the aforesaid Treasons and Robberies in the Form aforesaid; contrary to our Dignity

Dignity, and Destructive of our Kingdom of *England*. And now after all our aforesaid Bishop asserting that he was not guilty of the Treasons and Felonies, we therefore taking into our Consideration that the aforesaid *Thomas Merk* is by no means worthy of the Character of his Pontifical Dignity, and furthermore, being willing out of Reverence to God, and respect to his high Station, to moderate the Rigoour of our Royal Justice by our accustom'd Clemency, thinking that 'tis undubitably more pleasing to God sometimes to spare, and be merciful, than continually to exercise our bloody Sentences ; of our most especial Grace, and by the Inspection of these Presents we have granted our Pardon to this same Bishop, the Disturber of our Peace. as far as appertains to us, for all manner of Treasons, Murders, Felonies, Misprisions, and Transgressions aforesaid, and also Convictions, Attainders, Judgments, and Executions of Judgments in the Premises, and also for all Treasons, Felonies, Misprisions, and Transgressions done or committed by him before this Time and also Outlaws, so that he may stand *re-gus in Curia*, in case he is examined concerning the Premises.

*VVitness the King at West-
minster, 28 Nov.* *Per ipsum regem,*
Rymer's Fœdera. Vol. 8. A. 2 Hen. 4. A. 1400

p. 103.

Numb. 3.

The General Pardon of Henry IVth, for those Concern'd in the Nor- tbumberland Insurrection

*The King to the High Sheriff of
Northampton Greeting.*

THE Tenour of the Pardon granted
by us in this present Parliament we
send to you in these Words. The King of
his especial Grace by the Consent of the
Lords Spiritual and Temporal, and at the
Request of the Commons in this present
Parliament assembled pardoneth all his Lieges
and Subjects of the Realm of England of the
Country of *Wales*, and *Marches*, for Treas-
ons, Insurrections, Rebellions, Misprisions,
Felonies and Trespasses committed before
this time, except those who are in Prison or
guard on Account of petty Treason ; and
except Murders and Rapes on Women,
Coun-

Counterfeitors of the King's Seal, Coiners of false Money, and Felons who are corporally detained in Prison, or Mainprise, or Bail; and further, the Sovereign Lord the King doth Pardon all his Lieges and Subjects of the Realm of *Wales* and Marches aforesaid, and every of them who are at present Adhereats to his Enemies and Rebels, who will return to their Allegiance again within Forty Days after the Proclamation of this Grant and Pardon, from all manner of Treasons, Insurrections, Rebels, Felonies, Trespasses and Misprisions, done or committed by them, or any of them before the Time of their Surrendring to Allegiance; and therefore those of *Wales* may submit themselves to the King or the Prince of *Wales*, or the Duke *D'everwyke*, or the Lieutenants, or Deputies; and those of the Marches of *Scotland* may submit themselves to the King, or to *John Fitz Duroy* Guardian of the East March, or to the Earl of *Westmorland* Guardian of the West March of *Scotland*, or to the Lieutenants or Deputies; providing nevertheless that *William Serle*, *Thomas Ward* of *Trumpington*, (who pretended to personate King *Richard*) and *Ayme Donet*, do not and shall not enjoy any Advantage from this Act of Grace and Pardon because they are expressly excepted out of the Pardon and Grace aforesaid. commanding that the Tender aforesaid be publickly and

and without Delay proclaimed in the County aforesaid, as well within Liberties as without, where it shall be most necessary and expedient, and this you are by no means to omit.

Witness the King at Westminster 20 of March.

The same are directed to all High Sheriffs throughout England.

De Pardonatione Rymer's Fœdera. Vol. 8.

S. Hen. 4. Anno 1404 p. 353.



Numb. 4.

An Order from *Henry IVth* to
prevent plundering.

*The King to the High Sheriff of York-
shire Greeting,*

WHereas we understand, that many of our Leige Subjects have of their own Rashness presumed to plunder and make Prey of the Goods and Effects of some of our People, as well as of those in the Company of *Thomas Earl of WOrchester*, and *Henry Percy Knight deceas'd*, and other Rebels; as those belonging to *Hen^v Earl Northumberland*. (who contrary to their Allegiance have rais'd an Insurrection against us) and do daily proceed in making Plunder and Prey of those Goods, altho' every thing of that Nature do of Right belong to us, and not to another: We taking into our Consideration those Spoils and Preys which if we suffer to be committed will not only bring a Contempt and Prejudice to our selves, but manifestly tend to the Commotion of our Subjects, which we will

not, neither ought we to suffer, especially since we are always ready, and always will be, mercifully to grant our Favour on this Account much as in us lays to all those who in this Part will seek for it; do command and firmly injoin you, that presenty upon the Sight thereof in all Places within your Country, where it will be most necessary and expedient, you do on our Part make Proclamation, that all and every of them who have done and committed these Spoils, and Robbery's, do without delay restore to those unto whom they belong, all those Goods and Effects they have thus deprived them of, and that no one (of whatsoever State, Degree or Condition he is) do presume after any other manner to make or commit such Prey and Spoils ; and moreover, that you make known to all and every one of our Leige Subjects on our Part, that it is not our Intention, that any one who was in our Company at the Conquest of the aforesaid Rebels in the Battle near Shrewsbury, should be accountable for the Goods and Effects there taken from these said Rebels : and this you must by no means omit on the Penalty which may come upon you.

Witness the King at Pomfret the 4th of Aug.

The same were directed to the High Sheriff of Northumberland, and to the Sheriff of the City of York.

Rymer's Fædral, Vol. 8. 4. Hen. 4. A. 1403.
p. 321. *Numb. 5.*

Numb. 5.

A General Pardon 23 Henry VI.

The King to all his Sheriffs or other loving Subjects, to whom these Presents shall come Greeting.

KNow ye, that of our special Grace and good Will, we have pardon'd and releas'd *A.* from all Transgressions, Offences, Misprisions, Contempts and Impeachments, which the said *A.* shall have incur'd before the Ninth Day of *July* last past, against the Tenour of the Statutes, &c. Notwithstanding the said Statutes. Moreover out of our meer Grace and Favour, we release the said *A.* from any Pretensions we can have against him for Breach of our Peace, for all Treasons, Murders, Rapes, Rebellions, Insurrections, Felonies, Conspiracies, Champarties, bribing of Juries, or other Transgressions, Offences, Omissions, Extorsions and Misprisions, Ignorances, Contempts, Concealments, Faults or Deceits committed by the said *A.* before the Ninth Day of *June*. We also release to the said *A.* all manner of Outlawries, insomuch that he shall be right in

our Count, and capable of answering any Objection which shall be made therein against him upon the before mention'd Accounts. We also release to the said *A.* all Fractions, Wasts, Impeachments, Destruction of our Forrests, &c. and all other Offences committed before the Ninth Day of *July*, as also all Fines, Imprisonments or Penalties he could have incur'd upon these Accounts, and all Causes which concern us, or upon our Account can be alledg'd against the said *A.* We also release him of all Pretensions upon the Account of Alienations, Donations, which concern either us, or our Predecessors before us; and of all Mistakes, Intrusions, or entring upon his Lands without due Course of Law. We likewise Pardon the said *A.* from all Penalties incur'd before the Ninth Day of *July*, by his Offences against us or our Predecessors.

“ The General Pardon proceeds to the
“ End, in specifying the particular Offen-
“ ces pardon'd, which upon the Account
“ of Tautology, I shall not trouble
“ the Reader with.

Numb 6.

The Pardon of JOHN EB E who ad-
her'd to JACK CADE.

The King, &c.

KNow ye, whereas that Arch Traytor *John Cade*, who lately stil'd himself *John Mortimer* and Captain of *Kent*, himself with vast and immoderate Numbers of Peo-
ple, in several Places in our Kingdom, and particularly in *Kent*, and the adjacent Places without our Authority and Command, did rashly assemble and gather together, and in contemning our Statutes, Laws, and the Honour and Dignity of our Crown, have incur'd the Penalties of the said Statutes.

But we considering with our selves, that of all the Virtues which are an Ornament to our High Station, Clemency is the Chief, and the more peculiarly adapted to make our Commons ashamed of their past Faults. And moreover, considering that a Prince would so behave himself to his Subjects, as he expects Favour from the Hand of God, the Supream Governor of the World; for these and many other pious Considerations; of our Royal Graee and Clemency, we

have releas'd and pardon'd John Ebe of the Order of the Fryers Minors, (or by what ever Name he is call'd) who contrary to the Laws and Statutes of our Kingdom adher'd to the said Traytor, and assocciated himself with him, of all the Consequences of his adhering to the said John Cade, all the Murthers, Insurrections, Treasons, Felonies, Misprisions, Offences, Impeachments, Confederacies, Conspiracies Confabulations, Concealments, Omissions, Robberies, Plunderings, and Thefts, and all other Deeds, for which he could have been prosecuted ; all which we absolutely by these Presents pardon and release him from, and grant him our full and perfect Peace in such a manner, that he shall be *rethus in Curia nostra* ; to answer all Accusations or Impeachments, which shall be brought against him upon the Account of any of the said Premises.

Witness the King at Westminster May 18,

Pr. Brev. de Privat. Sig.

De Pardonatione lib. M. S.

Numb. 7.

Act of Attainder Henry VI.

Forasmuch as the late King *Henry VI.* against the Honour and Truth that ought to be establish'd in every Christian Prince, dissembling with the Right Noble and Famous Prince *Richard, Duke of York,* excited (against his Promise, and the Form of the Convention, and Concord made between them, of, and upon the Right and Title of the said Crown, Royal Power, Dignity, Estate, Pre-eminence and Possession of the said Realm) the Murder of the said Duke, and whereas the said *Henry* Usurper, dissembling the Destruction of other Lords and Persons of the same Realm; by his Writ call'd to assist him, to attend upon his Person, to resist and repress another Commotion of People by his Assent and Will gathered, and wager'd not only in the *North* Parts, but also out of *Scotland*, coming from the same Parts with *Margaret* late called Queen of *England*, and her Son *Edward* late called Prince of *Wales*, intended the extreme Destruction of the said Realm. The same *Henry*, Actor, Factor and Provoker of the said Commotion, offer'd a fraudulent Diffimation in a Field, beside the Town of

St.

St: *Alban's* the 17th of *Feuuary* last past, not joining his Person and Blood to the Defence, Tuition and Salvation of the same Lords and Persons, coming to assist him by his Authority and Commandment like a Victorious and a Noble Captain, but like a deceivable Coward against Princely and Knightly Duty suddenly, privately, and shamefully refus'd them, suffering and procuring the Effusion of their Blood and horrible Murder and Death, not having thereof Sorrow, Pity, or Compassion, adhering to the said *Margaret* and the Duke of *Somerset*, and other Lords and Persons that committed the said horrible and cruel Murder of the said Duke, of *York*, and of the Earls of *Rutland* and *Salisbury*, and also of the said People in the said Field near St. *Albans*, giving therefore to the laid Duke, and others assisting them therein, a special Land, and thanks from thenceforth applying to them, and to their outragious and unlawful Riots and Misgovernance; after that, suffering wilfully the worthy and good Knights *William Lord Boncville*, and *Sir Thomas Kyrel* for the Prowess of Knighthood, approved in their Persons and called to the Order of the Garter, and *William Gower*, *Efq*; the Bearer of one of his Banners, to whom he made Faith and Assurance, under a King's Word proceeding from his Mouth to keep and defend them from all Hurt, Jeopardy, or Peril

ril to be murder'd ; and after that to be tyrannously beheaded, with great Violence, without Proces of Law or any Pity, contrary to his said Faith and Promise, abominable in the hearing of all Christian Princes. Forasmuch also, as *Henry Duke of S. merſet*, and also *Thomas Courtney* late Earl of *Der onshire, &c.* accompany'd with the *Frenchmen* and *Scots*, the King's Enemies, falsely and traiterously against their Faith and Allegiance, there waged War against the same King *Edward* their rightful, true, and natural Liege Lord, proposing there and then to have destroy'd him and depos'd him of his Royal Estate, Crown, and Dignity, and then and there to that intent, falsely and traiterously moved Battel against his said Estate, shedding therein the Blood of a great Number of his Subjects ; and also *Henry Duke of Exter, &c.* purposing and imagining the Destruction of our said So- Lord King *Edward*, to Depose him of his Royal Estate and Dignity, procured of *James King of Scots*, and his Subjects, then Enemies of our said Sovereign Lord ; their Aid, Assistance, and armed Power, to enter upon the same our said Sovereign Lord into his said Realm, to put him from the Reigne thereof. It be declar'd and adjudged by the Assent and Advise, First, of the Lords Spi- ritual and Temporal, and Secondly of the Commons being in this present Parliament, by

by Authority of the same; that the said *Henry*, late called King *Henry VI.* for the Considerations of the great, heinous, and detestable Malice and Offences afore specified, by him committed against his Faith and Legiance to our said Liege Lord King *Edward IV.* his true rightfull and natural Liege Lord, and that he offended and hurt unjustly and unlawfully the Royal Majesty of our said Sovereign Lord; stand, and be by the said Advise and Assent, convicted and attainted of High Treason.

Theatrum Criminis. p. 229. Vol. 4. Ms.



De admittendo in Gratiam.

The King to our most Dear Cosin Richard Earl of Warwick, Greeting.

KNow ye, That as we have taken the Government of our Kingdom of *England*, by a just and true Title, and the Right of Inheritance ; and being willing to call together all the Subjects of this our Kingdom to their due Obedience by gentle Means, and being very confident of your Prudence and Faithfulness ; we have assigned and do give you full Power and Authority to receive and admit all; and every of them who are on the Part of our Adversary *Henry* late King of *England*, either with him, or by themselves, to their Obedience, and our Favour, on Condition they will recede from the part of our abovesaid Adversary, and come to us ; and we will take Care to Issue our Proclamations in proper Places, and moreover we do appoint you over all and every the Mannors, Lands, Tenements, and Goods of the Rebels, and of those that will not come to their Obedience wheresoever they are, or may be found ; to be seized and taken

taken into our Hands, and that you Answer for the goings out and coming in, and Profits of the same, and therefore we Command you to make diligent search of the same, and we give to all every High Sheriff, Mayors, Sheriffs, Constables, and other Officers, our faithful Subjects and Lieges, whomsoever as well within Liberties orders that they be in all things diligent, assistant, and obedient to you in the Execution of the Premises.

*Witness the King at
Westminster, the
12th Day of
March.*

Rymers Fæder, Vol. II.
Ann. 1461, p 474.



Numb. 9

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A
Vindication
OF THE
HISTORY
OF
CLEMENCY,

With Reflections upon the late Procee-
dings against the Author.

In a Letter from himself at Paris, to his Friend in
London.

To which is added,
An Edition of the said History, with
Additions.

III.
74.
Address'd to all that ever Design to be in Arms, a-
gainst an Establish'd Government, for their In-
formation and Benefit.

*Manus hac Iamica Tyrannis,
Semper erit, semperque fuit!*

Take thee again another Roll, and write in it all the
former Words that were in the First Roll, which
Jehoiakim the King of Judah hath Burnt. Jerem.
36 28.

L O N D O N : Printed in the Year
1720.

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S I R,

VOU was pleas'd in your Last to Insinuate, that a Vindication of my Conduct, in Relation both to writing the *History of Clemency*; and withdrawing upon the same from *England*, was evidently necessary for several Reasons, Which you was pleas'd to Enumerate therein; you also Inform'd me that my Friends as well as my Enemies Requir'd the same, and that I could not do Better than Vindicate my self from the fly Reflections of the first, and the Candid Hostilitys of the Last.

I am very well satisfied, from whom I have most to fear, I mean those whom I have oblig'd, and in whose Vindication I have taken more Pains, than they have delerv'd. For them I have Sacrific'd my Quiet, my Fortune, and the Enjoyment of my Country; while they have Bask'd themselves in the warmth of that Cle-

mency, which I never expected; shou'd fall to my share to want.

I thank my God, *Clemency* is a Virtue I should Rather wish to Exercise towards others than want the effects thereof on my own Person. When I ever offend against either the Laws of God or Man, I shall not trouble any Prince in the Earth for a Pardon; and if during the course of my Life, I should ever fall under the Paws of Tyranny and Oppression, which they call a Pardon is only a Relaxation of Violence and giving me my own; the obligations I have to such Men are the same I shou'd have to the Robber in the High Way, if he was so Civil as to give Back somewhat he had no Right to take.

You was pleas'd Sir to demand the Reason of my appearing in so publick a manner, to Arreign the justice and clemency of an establish'd Government, and then so suddenly to fall back, and cast my self into the unhappy Circumstances of an unnecessary Exile.

To this I Reply, That neither their justice or Clemency is directly thro' my fault Concern'd in that Book; I only
Acted

Acted the part of an Historian, and if that is reflecting upon the Government, Let all History, all Memorials of past Ages be burnt or destroy'd; and may the World Commence only from the first Year of this present Reign; then indeed General *Wills* Definition of surrendering at discretion may stand good; the Law of Arms may begin with *Preston*; And all Justice Honour and Virtue is in its Infancy, not above four Years of Age.

For my part I must be excus'd if I run my Principles up much Higher, I believe justice and Honour to have coexisted eternally with God, and that an Historian is oblig'd by the Eternal Laws of Justice, to confine himself to Truth.

As to my appearing in so publick a manner, it leems to me, the firmest Evidence of my Innocence; that I was not haunted with Conscious Guilt, that I had done no evil, and therefore fear'd none. If my Adversaries will not bear this Construction, I impute it only to prejudice, the fatal Enemy to Candour and good nature.

I so far differ'd from the common Opinion of the World in this Case; that I

did not in the least apprehend a prosecution for the same. I read Prayers publickly in my Congregation to the last; so far was I from apprehending any molestation for writing a plain History of Matters of Fact, Transacted before any Person now alive was Born.

My Reasons for this Assurance were These.

I. I had advanced nothing in the whole Treatise liable to the least lash of the Legislative Power now in Being.

You observed to me that even the Title Page, was an affront to the Government; as it was a direct application of the Results of the Treatise to the same, and that even the Motto was very indecently plac'd there, after such a preamble concerning Invidious Facts, which had made a noise so lately in the World.

At the worst this cou'd amount to no more than a Misdemeanour; and our Laws must be stretch'd to their full length, to cast me in this point.

A Jury is not to set upon the Thoughts of a Man, they are only the judges of his external Actions, and if they find an innocent Construction plain and easy without

out violence to the sense and Scope of the Author; this must ever be applied in his Favour; if therefore the Title Page as it even now stands, wou'd endure a favourable and easy Construction agreeable to Grammer, Reason, and Sense, in any Reign whatsoever, how can it be Criminal in this; For my part I design'd the Book shou'd endure as long as Monarchy prevails in this Island; it contains Lessons no Prince can be too Good or too Great to Learn, its no more than the Result of *Solomons* Confirm'd Experience in Cases of that nature, illustrated by English History, and is therefore most proper for English Princes to understand: where then cou'd be the Crime to take the Motto from the Son of *Sirach*, so adapted to the Scope of the Treatise; which cou'd offend no other Reign? and why shou'd it offend the present, let my Enemies and other Peoples Friends tell.

Wou'd King *Charles II.* have been stung with such a Motto; wou'd it have entered into his Heart, that he was the foolish King who destroyed his People? no he was as free from Guilt as from Suspicion; and such a reflection wou'd have ra-

ther sweeten'd into a jest than sowr'd into Resentment.

The time indeed in which this Book came forth was unhappy; immediately upon an Act of Grace which succeeded the Destrunction of some Hundreds of unfortunate Creatures. However, This cou'd not be my Fault; an Historian (as I observ'd before) is oblig'd to shut his Eyes to the present Times when he writes an History of past Ages, to prevent Partiality, Terror, or any private Views from corrupting the Integrity of his Pen; in short I look upon an Historian while he adheres to Truth; to be above a petty Prosecution for Misdeamenours, and Libelling, especially when he fixes his Name to the Frontis-piece of his Work.

If Texts from Scripture, or from Books of Morality must be cautiously Quoted, and Truth in History cautiously spoken for fear of the anger of great Men; then may Scripture and Truth be for ever Banish'd from the World; and may the Head of the Church, contrive new Scripture, new Faith, and new Morality for his own convenience and pleasure, for my part

part I cannot understand the inconsistencies of a certain Party, who sometimes sink the Prince into the lowest plunges of Contempt; and again to serve their purposes exalt him above all the Laws of God or Man. They make him accountable to every Mechanick when he Acts in the *Tory* Sphere; But when he is *Whig*; he shines then like an Exhalation drawn from Earth, and mounted into an Exalted Orb; He Ranges like a Comet thro' all his irregular and burning Paths without Controul.

Surely, Sir, you will agree with me, that the Government cou'd, take no hold upon me for Quoting the Son of *Sirach*, at the bottom of a Title Page, when it had a Direct Reference to the proceeding Lines.

The Preface you tell me Sir has made a great noise in the World; tho' in the main it is only a Recapitulation of Evidence given in a publick Tryal in the House of Lords and the Offence (if any) was only against that Assembly in Reporting what they publish'd to the World.

I can never persuade my self the Government can think it self Interested in the

the vindication of private Men, especially when the matter of Fact was so Evident against either one or the other ; it is injurious to suppose they are oblig'd to support publick Perjuries, especially when those Oaths, affected the Lives and Fortunes of so many *English* and *Scots*, of illustrious Families who are levell'd now with the Beggar upon the Dunghill ; and whose posterity will Curse the Authors of their Misfortunes.

In short Sir, Contradictions can never stand in Friendship together ; nor is it possible for the Wit of Man to bring *Wills* and *Munden* jointly off from the Guilt of Perjury ; on when it must fall, let others judge, for my part I have still maintain'd the Character of an Historian, and given the Reader what I found upon Record to be true.

One point I have not Determin'd upon in all my History, *viz.* That those Gentlemen at *Preston* ; surrender'd at Discretion, and while I left that undetermin'd . it is impossible I cou'd reflect upon the Government in the whole Treatise for the Question turns upon that Fact.

My

My Hypotheses is founded upon a supposition that if Rebels do surrender at Discretion in what manner they are to be Treated; if this is a Crime, I have no more to do with Innocence; I shall resign my Conscience to the Direction of those who shall bid Defiance thereto.

The Body of the Book is no more than pure English History strip'd of all partiality, prejudice or affection. I Defy the whole Body of Judges to pick one Expression Criminal therein, unless it was Criminal to give Doctor *Kennet* a wife, before he was a Consecrated Historian; and to ask a sober and modest Question, how an Infant cou'd be capable of Sinning against the State, before he cou'd be capable of Sinning against God.

If the Relation of the Horrid Massacre of *Glenco*, offends weak Stomachs, and more weak Consciences, I am sensibly Touch'd in their Behalf. However I should have merited the Punishments design'd for others, if I had omitted an Action of that Consequence in an History of Clemency.

The Fact was done in the Last century two Reigns past, by one who was scarce

a Kin to the Prince now in Possession of the Throne of *England*; if this comes under the notion of a Misdeameour, it's Dangerous to dip into *English History*, and the Disputing even *William the Conquerors Title* may be High Treason; our Laws seem to have *Argus Eyes* they look all manner of ways, and I am a afraid Hang on all manner of Sides.

While the Reputation of even K. *Charles the First* was open and free to the Attacks of Republicans and Blood-thirsty Men; surely (thinks I) the Nephew may come in for an Honest share, of what he so much deserves, when the Uncle has been unmercifully Loaded with Crimes not his own.

If I had put down any matter of Fact not well attested, I shou'd have been Indeed struck in my own Conscience with Horrour, yet it cou'd scarce find room to be a Crime in this present Age, when Records in the Tower, Manuscripts in Libraries, and Posthumous Histories have been press'd into this Paper service, to stain a clear and innocent

Innocent Manufacture with Lies, Falsehood and Treachery.

I must confess I was Rash in not Reflecting upon the fate of the Author of *Hereditary Right*, he paid dear, for his knowledge in *English History*. In fine as *Nero* was sorry he ever Learn'd to Write, an Honest Man may be sorry he was ever Taught to Read, if that knowledge endangers his Liberty or his Life.

Thus far Sir I hope you will grant that I have given my Adversaries a fair Tryal, and according to reason Conscience and Honour, I am Acquited before the World; However you have still a most heavy Charge, behind which weight I must sustain in my own Person.

You say that I Dethron'd the present Prince in Possession, turn'd a Pretender into a King, & invested him with equal Right and Justice as his Rival.

You must Remember there Sir I gave him a Title Cook'd up for him by Doctor *Higden*, and several others who had Consciences of the same size a Title which no Man of spirit wou'd take from

from the Ground, and a Title which Oliver Cromwell spurn'd at; you may plainly see that I argu'd upon a Modern Scheme, I laid nothing down as my own, but made use of the Concessions of others.

As to the Act 11. Henry VII. This was urg'd in behalf of unhappy Men. Tho' I was not retain'd their Council in the Court, an Historian may properly be said to be retain'd a Council for them to the World; for a Man in such cases has two Trials to undergo: his Fame and his Reputation will pass the Verdict of a more Diffusive and Impartial Jury. than 12 Men pick'd out to condemn before they hear, which in my own Person I know to have been true at some certain times.

If that Act was wrong Interpreted it fell very little short of the Truth, and I am sure it at least Concerns those Gentlemen taken at Preston, as much as the Act against Conventicles affects the Clergy of the Church of England.

The Result of what has been said amounts to this; whether I have in the least incur'd the Imputation of a Misdeamenour by any single passage in the Book.

If my Book does not come under the notion of a Libel, no misdeamenour can be laid to my Charge ; But that it is no Libell, can be Undeniably prov'd, by the unanimos Content, of those who have pretended to put a Construction upon that word.

Sir Edward Coke, gives these following marks of a Libell.

Pravitatis incrementum ? Bursæ decrementum. 3. Conscientiæ Decrementum.

Leudnes, Beggary, and Scandal upon the Consciences of Men.

(a) He likewise takes it for granted, that a Libell is a Secret thing, and Wounds in the dark ; for says he, it is worse than an open Assault against which a Man can defend Himself ; And is like Poisón which works Secretly, and gives no opportunity for Defence. This is the Case of one who Wounds in the

(a) Mes Greinder offendor est, celui qui Poysen un autre, car en Lui case celuy qui est apertiment Assaull ; Poit L i mesme Defender, & scavoit son adversair & poit Endeavour, a Preventer ceo, mes Poysoning poit etre si secretment qui nul poit Defender Lui mesme Encounter. Co. 5. p. 126.

dark, and whose Name cannot be known.

It ought also to be consider'd, that the Intention of the Person is to be respected who writes the suppos'd Libell; if therefore I direct a Letter to the Person concern'd, and not to a Third Person, it is no Libell; because it is taken for Granted, I write in an Exhortatory manner to reform him. (b)

Nor can a Father be Prosecuted as a Libeller, for a Letter to his Son.

Nor cou'd the seven *Bishops* in King *James* II Keign be Libellers in presenting a Petition to the King; for tho' the word Petition cannot Screen and Protect the virulence of a Libell; nevertheless as they were Peers: they were *Confiliarii Regni*, & might therefore tell the King what was contrary to Law.

So likewise in a Court of Justice, an Accus'd Person with Regard to good Manners, may say such things as Imply that the King or the Court deall Injustly with him, for if he has not fair play in the Court, he may insist upon the

(b) Brownlows 2 Reports p. 151.

same,

same, & even in pleading his own Innocence he accuses the King by whose Authority he is try'd, and tho' Accquitted he is expos'd to Hardships, Equivalent to a Punishment. for any less than Capital Crimes.

For the same Reason if a Man Prints his Justification and publishes the same to the World ; if it Appears that the Scope is directed for that main End, If coniequentially the Government or Ministry is reflected upon, this can be no Libell, because the design is not to Blacken them, but to clear himself, and no Man can be Criminal in doing any thing agreeable to the Law of Nature, which wou'd have every one free from Crimes, and appear so to the world ; for our Fame is equally intrusted to our care, to defend, as our Lives. Dear Companions that ought never to be parted in this World.

What I have here laid is Consonant to good sence, and the old *English* Constitution, ever tender of the Liberties of *Englishmen*.

I hope the Reader by this time will be satisfied, that neither the *History of Clemency*

Clemency, nor this Letter to your self when Publish'd can come under the notion of a Libell, as it is least in my Thoughts to Defame or secretly Blacken either those that have a good Name, or those who have a bad one.

I appeal to your self whether any thing I have laid can be a Libell, or a Misdeamenour; for even since the Revolution In *Hurt's Case*, if the fence he put upon his Libell, himself cou'd, have been consistent with *Grammar*, he had been Acquitted: how much more ought I to have the same Measure, when my fence will bear the most Innocent Construction, and whose Book will stand the test of the best of Reigns, nor wou'd have offended even the peacefull humours of King *Charles the II.*

I have not mention'd the Prince now in Possession, thro' the whole, neither have I mention'd his Ministry; But I have cast the whole weight of the Story upon the Evidence given at my Lord *Wintowns Tryal.*

Nay I open'd a way for the Government to save their own Credit, by supposing they might be impos'd upon by their

their Generals ; and I am sure this and nothing less will soften the Severities us'd to those unhappy Men.

Thus Sir, you perceive how well I have been rewarded, by those who Clamour only to confound Reason and common Sense.

If I had once said those Gentlemen, at *Preston* suffer'd unjustly; if I had accus'd the Ministry for bringing them to their Tryals; if I had charg'd the Prince now in Being with Cruelty and Revenge; I had been surely the most indiscreet Man in the World, to have expos'd my unarm'd self, to Power and Resentment at once.

To conclude Sir, This Head, I dare stand the test of Sir *Edward Cokes* three Marks of a Libel.

I. I have accus'd no Person of Lewdness thro' this whole Book, except *Edward IV.* in which Character I am supported by the unanimous Opinion of all Historians, and of some Poets, too particularly, the late ingenious Mr. *Rowe* and the Author of the *Ballad of Jane Shore*.

II. I have not decry'd any ones Purse, I have not so much as even said that the Nation was poor, nor have I made any

reflection upon the Soil, the productions, or the Manufactures of Hannover, nor of any Country in that Latitude.

III. I have wasted no Mans Conscience, except that of one of the Generals at Preston, and as I have not determin'd the particular Person; there can be no room for personal hatred or the least Mark of a Libellous Intention in the Author.

Thus far I hope Sir, you are well satisfied that the Laws of my Country are intirely on my side; that I can defy Mr. Attorney General, to pick out one Sentence to support a Charge against me, at a publick Trial. I have only acted the part of an Historian, and if an Historian in Writing past Matters of Fact; may be subject to prosecution as a Libeller, then our grave and Reverend Divines are Condemn'd; even a present Bishop is no better, who has not spar'd to dip even his Pen in Gall against the poor prosecuted Bishop of Carlisle long since Dead.

In short dear Sir, the difference between a Libeller and an Historian is this; the one writes in order to defame and blast, and the other for the Information of

of Posterity ; the first is criminal and the Latter uieful necessary and Instructive. They are a set of Men encourag'd by all except the most barbarous Nations, and particularly by a certain Lord who gives the Dead room in his study and hospitable Entertainment ; how zealous soever he seems to bring the Living to the Gallows, Or to assign them a Reception in *Newgate*.

Thus far nothing appears, only prejudice Rais'd from the hot Brains of partial Men sworn in *verba Magistri*, who have no Rule, except the Directions of a Party ; nor no Standard, but the Dictates of their Superiors.

I hope Dear Sir ! by this Time I may reasonably demand, against what Laws of God and Man I have offended ? if against neither, why am I haunted like a Partridge upon the Mountains ? why am I compell'd to live like an Outlaw ? and am put upon a Level with Felons and Murtherers.

I shall proceed to the second Reason of publishing that Treatise.

2d. It was wrote in Defence of the common Rights of Mankind.

For as the matter of Fact is not yet clear'd up, whether the Gentlemen surrendered at Discretion or no? all possible Methods ought to be taken, to prevent its being made a President for the future. The Blood of Thousands is concern'd in this Question, whose Trials are yet to come in future Ages; nay and perhaps in our own. The Law of Nations is the very life of Society; and when it is broke, the World is in its last Convulsions, and it is time for God to put an End thereto, by a Deluge or a Conflagration.

If for the future, *Preston* shou'd be made a President, that no Faith is to be kept with Rebels, we of this Kingdom are most likly to feel the first smart, on our selves or on our Posterity. As very few Ages draw their sable Curtains over our *English* Glebe, unstain'd with Nature Blood, Cou'd these alive see before their Eyes, the dreadful Scene to come, They wou'd be astonish'd at the dismal Consequences of their new Laws and new Presidents. They might perhaps see their own Children Butcher'd, by their Parents Cruel, Sentence, a just Return upon their Issue for their Father's Crimes.

In

In your Letter you demanded what Right Rebels cou'd have to the Law of Arms ; I Answer all Mankind have a Right to Compacts ; and wherever the Sword is flagrantly Drawn, no Prince of Humanity was ever so cruel as to insist upon his Sovereign Right, to punish in a Case fatal to the good of his Country, and which draws more Blood than is necessary on such Occasions.

Princes generally wave their Prerogative Condescend to usages, proper for the mutual Benefit of the contending Parties in the Field.

I do not pretend to say, a Prince is obliged strictly to Condescend thereto ; he may if he pleases be so mad as to suffer Fire and Sword to destroy his own Dominions, and then he wou'd become a Bangorian Lunatick ; one of those unwise Kings who destroys his People.

In short if we Consult History we shall find, that in open Civil Wars ; Princes are consequently led into those Measures. In my Book I gave a Detail of the Conduct of the Emperour towards his Hungarian Subjects ; he never disputed to grant them the Law of Arms from the very Instant

Instant they broke into open Rebellion, if we come back to take a View of the Civil Wars of *Scotland*; which began with the Murder of a Cardinal and ended with the Death of their natural Prince; we shall find the Usages of War to have universally prevail'd. (c) The Murtherers of Cardinal *Beton*, in the Castle of Saint *Andrews* stipulated to surrender upon Condition, that the Lives of all within shou'd be sav'd and the principales transported into *France*.

(d) The Congregation as they were call'd (whether of the wicked or of the Godly, let the Reader judge) took possession of *Perth*, the Queen Regent attack'd the Town, and brought it to Articles that none shou'd be molested for what was past.

How well these Articles were kept is not my busines to inquire; I only observe that she did not pretend to put one to Death, however unjustly she is charg'd by

(c) *Sporwood Hist. of the Ch. of Scot.* B. 2. p. 88.
A. 1547.

(d) B. 3. p. 122. 1559.

partial and venom'd Historians, with the Murther of a Boy who was kill'd by Accident.

(e) Afterwards she attack'd *Edenborough*, and brought the Lords to Terms, without suffering it to enter into her Thoughts, to except any for the slaughter.

From this time the War was carried on, and Prisoners were taken and us'd as in a Foreign Country; particularly Sir *John Cockburn* of *Ormiston*, Master of *Buckan*, Lairds of *Pitmilly* and *Fairney*.

(f) Upon the Death of the Queen Regent, a Peace clos'd up those Differences with a General Reconciliation of all Parties.

In the following Reign the Castle of *Inverness* was taken by Assault (says *Spotwood*) and we must observe that Towns taken in that manner have the least Reason to expect Mercy, nevertheless, altho' the Captains and principal Leaders were Execut-

(e) p. 128. 129.

(f) P. 147. An. 1560.

ed, the rest were sent quietly Home, (f).

After the Battle of *Corr'chie* upon a Council being call'd, what Punishments were necessary ; the Earl of *Huntley*'s Son only suffer'd ; his Brother was spar'd, because of his tender Age. Of the rest (g) says *Buchanan*, they were fin'd according to the greatness of their Faults, some were banished into Remote Parts of the Kingdom.

I cou'd proceed in the same manner to the happy Arrival of King *James* into *England*, which put a Stop to the numerous Conspiracies against him, and gave him an Opportunity of wasting his Clemency, upon an ungrateful People ; a fault equally imputed to his Posterity, and will be ; till the Blood by Succession of Ages is worn out of their Veins.

However, I wou'd not Reflect upon that Family, Clemency, is a goodlike

(f) *Præpugnatorum præcipui Supplicio affectate-ri incolumes Dimissi*, *Buchan*, l. 177. p. 180 l. 3. ed *Edenib.*

(g) *Multi Gordonio,rum Clientibus prout quisque Deliquisse visus est alii pecunia alii Exilio Multati, nonnulli in, Longinqua Regni partes ne Res Domi Turbarent Relegati* p. 182.

Virtue tho' it can neither procure a Peaceful Crown, nor a Peaceful Grave, to it's Abettors here below.

To return, from perhaps an Impertinent Digression, I shall observe, that a more vigorous War never Reign'd in Europe than that of 80 Years Duration between the *Spaniards* and the united Provinces.

At the beginning of this War, after the ~~Taking~~ of *Antwerp*, the Confederates were overthrown and *Gembours* thereupon surrend'red, *Austriacæ*, *Clementiæ*, (b) upon this the Town was Exempted from Plunder. ; The Soldiers were disarm'd, and the *Dutch* were sworn never to bear Arms against *Spain* for the future. *Goignius* their General who had before been taken and Exchang'd, was suffer'd to kiss the Arch dukes Hand and was us'd as a common Prisoner.

At *Sichen* the Arch-duke was very severe because they persisted to the last Extremity, and consisted of those Soldiers, who had before sworn never to bear Arms in that quarrel again.

(b) *Famian Strada*, l. 9. p. 338.

However *Diest* presently after was us'd well, and the Law of Arms was generally observ'd during that *War*.

(i) The Civil War in *France*, was carried on in the same manner, it began in the Year 1561. The King in Person Besieg'd *Bourges* and made it Capitulate as a Town in *Flanders* might do.

In the following Year at the Battle of *Dreux*, the Generals on each side were taken Prisoners, yet no Executions follow'd.

In short as we do not take the Law of Arms from *Barbarians* and *Turks*, but from Customs sprung up from Christianity, and allow'd by all Princes who are tender of their Subjects Blood; Examples from Antient History are not so necessary in this Dispute; nor shall I ask *Cleon* at *Athens*, nor *Machiavell* at *Florence*, what a Prince in these Cases ought to do consistent with his Interest, his Duty or his Honour.

(k) The first Gentleman from whom *Machiavell*, seems to have borrow'd his Politicks, made a very florid Speech to

(i) See le Gendre Histoire De France.

(k) *Thusydides*, Lib. 3. c. 37.

the Athenians, concerning what they shou'd do with the Mytelenians who after a Revolt had been Reduc'd to Obedience. In this Speech he tells them that they shou'd consider, *That they Exercis'd only a Despotick and Tyrannical Power over these People, who Obey'd them no longer they had an Opportunity to shake of the Yoke*; from whence he draws this Conclusion, *That it was better to govern these People with a continu'd steady Hand, of Violence and Impiety, than to let one bright Ray of Clemency or Goodness shine upon their Government.*

I am afraid this Gentlemans politicks
were Transmitted to *Matchiavell* and
from him to the present Age. At least
they have found many Advocates in our
unhappy Kingdom.

Surely Sir by this time you are come, into my Sentiments that the suddenness and violence of my prose-

(1) ἐσχοπουντες ὅπ τι φεννίδα εχετε τὸ ἀρχην καὶ προσεπιβολεύοντας ἄυτους καὶ ἀκοντας ἀρχομένους οἱ ἄνθραξ οὐν ἀν χαριξηθε βλαπτόμενοι ἄυτοι ἀκροῦταις ουμαν αλλ εἰ, οὐν ἰχνος μᾶλλον καὶ τὴν εκείνων ἔυροις περιγράψει, Lib. 3. 37.

cution more than any Consciousness of Guilt, push'd me into this Exile. Guilt I cou'd have none ; nor indeed, any Apprehensions of being fallen upon with so much violence for writing in the Defence of Virtue, of a Virtue most celebrated in all Ages, And almost appropriated by the very Heathens to their Gods alone.

I wou'd Require of these Gentlemen who have Declar'd open Hostilities against me, whether if the fortune of War should change they wou'd not Bind this Book to their Bosom ; plead in Defence of every Line thereof ; & put their Lives upon the issue of what is contain'd therein. I have known Men in as great Glory as they can possibly be ; Levell'd with the unfortunate and the miserable. Princes from their Thrones, must sometimes stoop to ill Fate. I wou'd therefore advise two Great Men in their Speculations, the one in English History, and the other in the Clasicks, the first to think upon *Edward II.* and the latter, on that of *Horace.*

*Mors æquo pede pulsat,
Pauperum tabernas,
Regumque turnes.*

I shall not trouble your Patience and good Nature any farther. I onely Desire that I may have the same Place in your esteem as before, in which I shall think my self particularly Happy ; as to my open Enemies, I pray my God to forgive them. And as to my Pretended Friends, I can onely tell them, I am plac'd above their Envy, invested with the best and surest Guards of Constancy and Patience ; and Believe me Sir, I am Infinitely pleas'd with a Passage in one of Mr. Steeles weekly Papers, viz. In the Midst of Calumny and Contempt, I will look upon that being which Whispers Better things within my Soul, my Glory, my Defender and the Lifter up of my Head. And I Remain Dear Sir.

Your Real and Affectionate
Friend and Servant.

M. E.

*Paris, a L' Ho'tell
de Salamander.*
May 30. 1718.

B R.

ERRATA.

It being Impracticable to attend the Press, so much as was Necessary, the Keader is desir'd to Pardon the following Errata.

Preface.

Pag. 5. l. 8. dele to.

Letter.

Pag. 7. l. 12. p. which l. what, l. 15. p. when l. whom, p. 19. l. 18. haunted l. hunted. p. 20. l. 20. p. nature l. native, p. 21. l. 11. l. and condescend.

Introduction.

In the Title p. one l. an p. 2. l. 17. p. are l. we dele Mr. k. p. 3. l. 16. p. Cornels l. Cornets, p. 6. after diffi-
culties l. to l. 56. p. orde p. order'd, p. 6. l. 15. dele the
l. 7. p. 22. p. pose l. posse.

History.

Pag. 21. l. 5. p. and l. and p. 22. ult, p. Hypod l.
Ypo1 p. 26. dele hold, p. 29. l. 19. dele wherein, p. 72.
l. 20. after upon l. him, p. 75. l. 1. p. Generall l. Gen-
teel, p. 123 l. 1 p. laws l. wars, p. 127. l. p. preceeds
l. precedes, l. 22. p. was l. has, p. 128. l. 8. p. Pru-
dencia l. Prudentia, p. 131. l. 22. after which l. wou'd,
p. 132. l. 6. dele nor, p. 141. l. 15. p. from l. for.

Appendix.

Pag. 161. l. 6. leigance l. legiance.



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